



Planning Commission Meeting

April 14, 2022 - 7:00 PM

Newberg city hall

**(teleconference meeting - instructions to join electronically at
www.newbergoregon.gov email comments to fe.bates@newbergoregon.gov)**

I. CALL MEETING TO ORDER

II. ROLL CALL

III. PUBLIC COMMENTS

(5-minute maximum per person - for items not on the agenda)

IV. CONSENT CALENDAR

IV.A Planning Commission Meeting Minutes

[PC Minutes -3.10.22.pdf](#)

V. QUASI-JUDICIAL PUBLIC HEARINGS

(complete registration form to give testimony - 5-minute maximum per person except for principals, unless otherwise set by majority motion of the Planning Commission).

V.A Appeal of MISC221-0001 Modification of Street Right-of-Way and Improvement Width - N Elliott Road Improvement Project

[APL22-0001 N Elliott Road 4-14-22 w Exhibit - Attachments.pdf](#)

V.B Conditional use permit approval to use a single-family dwelling as a vacation rental home

[CUP22-0003 2035 N Heritage Way w Attachments.pdf](#)

VI. NEW BUSINESS

VI.A Update City of Newberg Planning Commission Participation Guidelines for consistency with NMC Chapter 2.15 Departments, Boards and Commissions

[GEN22-0006 Planning Commission Participation Guidelines Update w Exhibit-Attachment.pdf](#)

VII. ITEMS FROM STAFF

VII.A Anticipated Schedule of Planning Commission Activities

[Memo Planning Commission Activities 2021.doc.pdf](#)

VIII. ITEMS FROM COMMISSIONERS

IX. ADJOURNMENT

ACCOMMODATION OF PHYSICAL IMPAIRMENTS:

In order to accommodate persons with physical impairments, please notify the Community Development Department Office Assistant II of any special physical or language accommodations you may need as far in advance of the meeting as possible as and no later than 48 business hours prior to the meeting. To request these arrangements, please contact the Office Assistant at (503) 537-1240. For TTY services please dial 711.

Planning Commission Agenda Item Report

Meeting Date: April 14, 2022

Submitted by: Fe Bates

Submitting Department: Community Development

Item Type: MEETING MINUTES

Agenda Section:

Subject:

Planning Commission Meeting Minutes

Suggested Action:

Motion to approve Meeting Minutes from March 10, 2022 Planning Commission.

Attachments:

[PC Minutes -3.10.22.pdf](#)

NEWBERG PLANNING COMMISSION MINUTES**March 10, 2022, 7:00 pm****414 E First St.****City Hall Permit Center Conference Room****Newberg Teleconference**

(This is for historical purposes as meetings are permanent retention documents and this will mark this period in our collective history)

Chair Kriss Wright called the meeting to order at 7:03 p.m.

PLANNING COMMISSION ROLL CALL:

Members present: Jeffrey Musall
Jason Dale
Sharon Capri
Kriss Wright, Chair
Aiden Gray, Student
Charles Aban, Vice Chair
Connor Hansen

Members Absent: Jessica Harrington

Staff present: Doug Rux, Community Development Director
Mary Heberling-Creighton, Housing Planner
Brett Musick, Senior Engineer

PUBLIC COMMENTS: None

CONSENT CALENDAR:

1. Approval of the February 10, 2022 Planning Commission meeting minutes

MOTION: PC Capri/PC Aban moved to approve the February 10, 2022, Planning Commission meeting minutes. Motion carried (7 Yes/0 No).

LEGISLATIVE PUBLIC HEARING:

1. Newberg Urban Renewal Plan and Accompanying Report Conformance with Newberg Comprehensive Plan

Planning Commission Resolution: 2022-378

Call to Order: Chair Wright opened the public hearing at 7:07 p.m.

Call for Abstentions, Bias, Ex-Parte Contact, conflicts of Interest and Objections to Jurisdiction: None

Staff Report: Community Development Director Rux gave a presentation on the Urban Renewal Plan. He explained the role of the Planning Commission.

Elaine Howard, consultant, discussed Urban Renewal, which was not a new tax, and its impact on other taxing districts and local schools.

CDD Rux described how the Urban Renewal Plan was developed and discussed Urban Renewal District subareas.

Ms. Howard explained the impact to the City of Newberg, projected revenues, duration provision, Comprehensive Plan chapters reviewed, and additional documents reviewed.

Public Testimony:

- a. Proponents: Urban Renewal Citizens Advisory Committee Chair John Bridges said all the taxing districts affected by the plan were invited to participate on the committee and most did. The priority was to make projects shovel ready, first for industrial, then for commercial, mixed use, high density residential, and last single family housing. The focus was to get more family wage jobs.
- b. Opponents, undecided: None
- c. Close of Public Testimony: Chair Wright closed the public testimony portion of the hearing at 7:38 p.m.

Staff Recommendation:

CDD Rux said staff recommended approval of the resolution.

Deliberation and Action by the Planning Commission:

MOTION: PC Capri/PC Dale moved to adopt Resolution 2022-378. Motion carried (7 Yes/0 No).

QUASI-JUDICIAL PUBLIC HEARING

1. Conditional Use Permit approval to use a single-family dwelling as a vacation rental home at 514 N College St. CUP22-0002

Planning Commission Order: 2022-03

Call to Order: Chair Wright opened the public hearing at 7:41 p.m.

Call for Abstentions, Bias, Ex-Parte Contact, Conflicts of Interest and Objections to Jurisdiction: None

Reading of Quasi-Judicial Announcements: Student PC Gray read the announcements.

CDD Rux noted a modification to the legal language.

Staff Report: CDD Rux presented the staff report. This was a request for a Conditional Use Permit to allow a vacation rental at 514 N College Street. He gave a background on the site and applicable criteria. He discussed the public comments that had been received. Staff recommended approval with conditions.

Public Testimony:

Applicants: Stacie Athon and Cody Willis, applicants, said the house would be utilized by business clients and family members. They would have monitoring devices to regulate noise and there would be a noise policy for guests. They would be managing the home themselves and would be happy to distribute contact information to neighbors. This would help support small businesses in the City.

Proponents: None

Opponents, undecided: None

Close of Public Testimony: Chair Wright closed the public testimony portion of the hearing at 7:54 p.m.

Staff Recommendation:

CDD Rux said staff recommended approval.

Deliberation and Action by the Planning Commission:

MOTION: PC Dale/PC Capri moved to adopt the Planning Commission Order 2022-03. Motion carried (7 Yes/0 No).

2. Appeal of MISC221-0001 Modification of Street Right-of-Way and Improvement Width – N Elliott Road Improvement Project.

Planning Commission Order 2022-04

Call to Order: Chair Wright opened the public hearing at 7:57 p.m.

Call for Abstentions, Bias, Ex-Parte Contact, conflicts of Interest and Objections to Jurisdiction: None

Reading of Quasi-Judicial Announcements: Student PC Gray read the announcements.

Staff Report: CDD Rux presented the staff report. This was an appeal of a decision on a modification of street right-of-way and improvement width for the N Elliott Road Improvement Project. He gave a background on the application and applicable criteria. He explained the appeal, which stated the City had not provided proof that it owned Mr. D’hondt’s property at 807 N Elliot Road and did not have the consent of Mr. D’hondt. He gave details on the elements of the appeal. He noted this was not a variance as stated by the appellant, it was a modification process per the code addressing right-of-way width. Staff recommended adoption of the order, which approved the January 14, 2022, Community Development Director decision.

Public Testimony:

Proponents: None

Opponents, undecided: Tyler Smith, Tyler Smith & Associates P.C., was representing the appellant. He noted the dimensions of Mr. D'hondt's property which included the right-of-way dedication and utility easement proposed. This was property Mr. D'hondt owned and the City could potentially condemn for use in the Elliot Road project. He thought the property needed to be acquired first before a land use application could be applied for. Staff said this was a modification, not a variance, but he thought previous staff reports showed that it was considered a variance at the time it was appealed. He asked for the City to wait on land use applications until it owned this property.

Close of Public Testimony: Chair Wright closed the public testimony portion of the hearing at 8:21 p.m.

Staff Recommendation:

CDD Rux responded the application submitted was for a modification. The applicant never applied for a variance. Staff recommended approval of the order.

Deliberation and Action by the Planning Commission:

PC Capri thought the Commission should wait until this was resolved with the property owner.

PC Dale asked CDD Rux how close they were to the 120-day time limit. He agreed with delaying to resolve this between the owner and City.

CDD Rux responded the applicant would need to extend the 120 day deadline. If they followed the code, the City would have to acquire the full right-of-way which was more than the preliminary design identified and purpose for the application's to reduce the right-of-way. There had been ongoing discussions with Mr. D'hondt on the potential acquisition of the right-of-way.

There was discussion regarding the Planning Commission's options.

PC Dale said if it was between taking property and delaying, he would rather not take property. He wanted to take the time to get it right.

MOTION: PC Dale/PC Capri moved to continue the hearing for Planning Commission Order 2022-04 to April 14, 2022, at 7:00 p.m. Motion carried (6 Yes/1 No [Musall]).

ITEMS FROM STAFF:

CDD Rux reviewed upcoming agenda items.

The next Planning Commission meeting would be held on April 14 at 7:00 p.m.

ITEMS FROM COMMISSIONERS:

None

ADJOURNMENT:

Chair Wright adjourned the meeting at 8:35 p.m.



PLANNING COMMISSION MEETING MINUTES

Approved by the Newberg Planning Commission this April 14, 2022.

PC Wright, Planning Commission Chair

Office Assistant II

Planning Commission Agenda Item Report

Meeting Date: April 14, 2022

Submitted by: Doug Rux

Submitting Department: Community Development

Item Type: PC QUASI-JUDICIAL PUBLIC HEARING

Agenda Section:

Subject:

Appeal of MISC221-0001 Modification of Street Right-of-Way and Improvement Width - N Elliott Road Improvement Project

Suggested Action:

Adopt Planning Commission Order 2022-04

Attachments:

[APL22-0001 N Elliott Road 4-14-22 w Exhibit - Attachments.pdf](#)

**PLANNING COMMISSION STAFF REPORT
APPEAL OF MISC221-0002 MODIFICATION OF STREET RIGHT-OF-WAY AND
IMPROVEMENT WIDTH - N ELLIOTT ROAD IMPROVEMENT PROJECT**

HEARING DATE: April 14, 2022

FILE NO: APL22-0001

REQUEST: Appeal of MISC221-0001 Modification of Street Right-of-Way and Improvement Width - N Elliott Road Improvement Project

LOCATION: N Elliott Road (E Portland Road to Newberg High School)

TAX LOT: The lots impacted by a reduced ROW width include R3217DB 06201, R3217DB 06200, R3217DB 06001, R3217DD 02501N/A

APPLICANT: Paul Chiu, City of Newberg

OWNER: N/A

APPEALANT: Dan D'hondt, and Rajiv Jain Managing Member of Cedar Terrace LLC, represented by Tyler Smith, Tyler Smith & Associates P.C.

ZONE: Low Density Residential District (R-1), High Density Residential (R-3)

PLAN DISTRICT: LDR (Low Density Residential), HDR (High Density Residential)

ATTACHMENTS:

Planning Commission Order 2022-04 with:

Exhibit A: January 14, 2022, Community Development Director's Decision and Findings

Attachment 1: Appeal Application

Attachment 2: Graphic Illustrating the Design Modification

Attachment 3: Community Development Director's Decision January 14, 2022

Attachment 4: Memorandum From Paul Chiu to Doug Rux, March 1, 2022

Attachment 5: Johnston v. City of Albany, 34 OR LUBA 32 (1998)

A. DESCRIPTION OF APPEAL:

NMC 15.100.090 requires proof that the property affected is in the exclusive ownership of the applicant, or the applicant has the consent of all owners. NMC 15.100.090. The City has not provided proof that it owns Mr. D’hondt’s property at 807 N Elliot Rd. The City does not have the consent of Mr. D’hondt. Therefore the application does not contain proof that satisfies NMC 15.100.090(B). That is a violation of NMC and of the case law in Johnston v. City of Albany, 34 OR LUBA 32 (1998)(Attachment 1 Appeal Application).

B. PLANNING COMMISSION MARCH 10, 2022 HEARING:

On March 8, 2022, the Mayor and City Councilor McBride meet with residents at Newberg High School to discuss the design of the N Elliott Road project. Staff was informed Mr. D’hondt did not attend this meeting.

The public hearing on the appeal was opened on March 10, 2022, and testimony taken with the hearing continued to April 14, 2022. The Planning Commission asked staff to find a resolution to the appeal. It also needs to be recognized that Mr. Smith noted the concerns in the appeal related to Mr. Rajiv Jain Managing Member of Cedar Terrace LLC had been resolved.

On March 21, 2022, the City Manager presented an option to the City Council to redesign the N Elliott Road project by removing improvements along the frontage of Mr. D’hondt’s property and creating mid-block pedestrian crossings north and south of his property frontage to address pedestrian access requirements. The City Council accepted this approach and asked staff to evaluate the design feasibility. Attachment 2 is the design graphic illustrating the design modification. The City Manager has reached out to Mr. D’hondt to enter into an agreement on the right-of-way design modification, but no resolution has been reached at the time of distribution of this staff report. If an agreement is reached it is possible that the appeal could be withdrawn by the appellant.

The applicant (Paul Chiu) submitted an extension to the 120-day statutory requirement to have all reviews conducted at the local level completed on March 23, 2022. Mr. Chiu granted a 60-day extension. The new deadline to complete all local reviews including appeals is May 2, 2022.

The Planning Commission has two possible options before them. The first is to deny the appeal as recommended by staff on March 10, 2022, and as recommended in this staff report. A denial of the appeal could lead to an appeal of the Planning Commission decision to the City Council which would hold a separate public hearing.

A second option is to approve the appeal. In doing so the Planning Commission would need to develop findings that support approval of the appeal. In this scenario Mr. D’hondt could appeal that decision to the City Council where a separate public hearing would be

held. Another alternative is that no appeal is filed, and the City of Newberg Engineering Division submits a new Modification of Street Right-of-Way and Improvement Width application that excludes the design modification along the roadway frontage of Mr. D'hondt's property, and the application would address the remaining three street frontages of 911 N Elliott Road, 1007 N Elliott Road, and 704 N Elliott Road. The design modification concept is represented in Attachment 2. In a new application public notice to all property owners along the N Elliott Road Corridor would occur, public comment would be taken, and a new decision issued based on the application submitted that would be appealable to the Planning Commission and City Council.

C. DESCRIPTION OF APPLICATION

The City of Newberg is working on the design for a transportation improvement to N Elliott Road from E Portland Road (Highway 99W) to Newberg High School. As part of the design for the transportation improvement, based on communications with residents along the transportation corridor when the project was initiated in May 2019, four properties were identified where there was a desire to narrow the right-of-way cross-section to a distance less than what is required by NMC 15.505.030(G) to reduce potential impacts. The Public Works Department, Engineering Division submitted an application requesting a determination if the right-of-way width could be reduced below the NMC 15.505.030(G) requirements as part of the overall design of the project to determine what amount of right-of-way and easements would need to be acquired.

The transportation improvement project would include right-of-way improvements for the N Elliott Road corridor from Highway 99W to Newberg High School. Proposed improvements include pavement, curb and gutter, sidewalk, ADA ramps, bicycle lanes, storm drainage, wastewater pipeline, water main, street lighting, conversion from aerial to underground power lines, traffic calming and roadway safety features, and landscape enhancements. Along the length of the roadway improvement the roadway would be narrowed below the 28.5' for a ½ street width improvement in front of four (4) parcels to address feedback from residents.

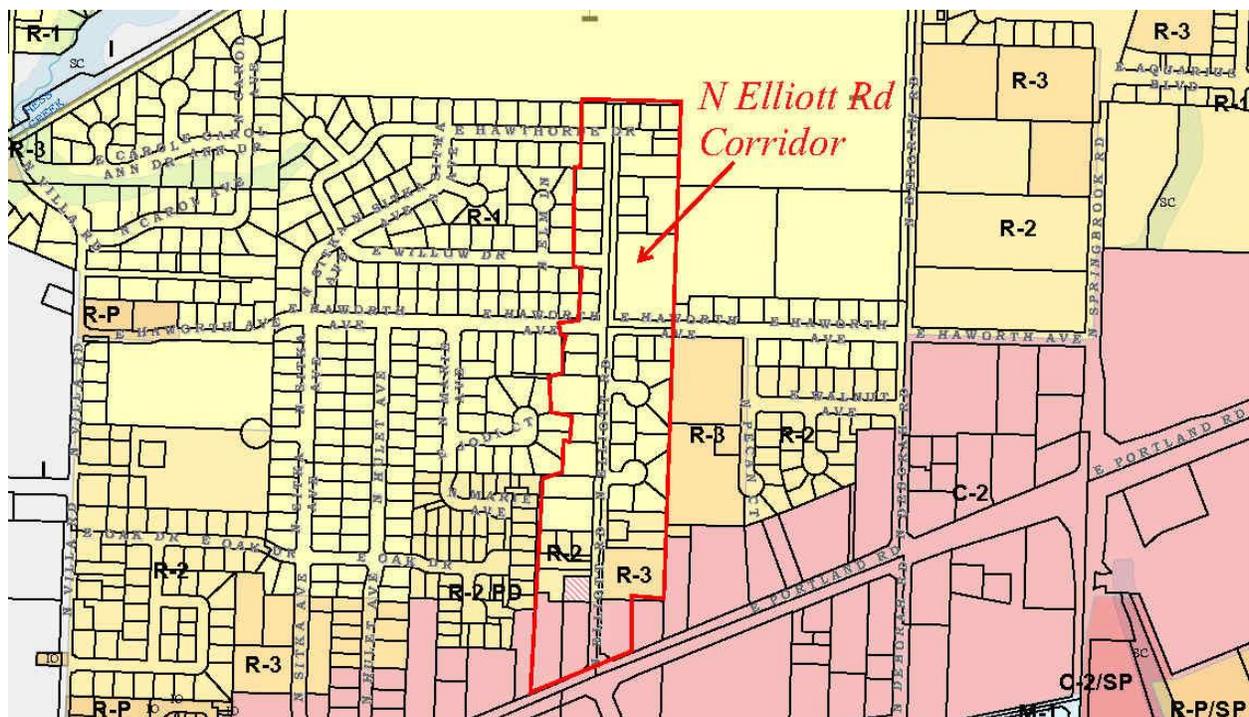
NMC 15.505.030(G) Street Width & Design Standards for Major Collector is 36' curb-to-curb (2-12' travel lanes, 2-6' bike lanes), 2-5' planter strips, 2-5' sidewalks → Total 56' of physical improvements. Typical sections show an additional 0.5' behind sidewalk to ROW. This gives a minimum ROW width of 57' as noted in NMC, or 28.5' for a ½ Street width.

The Elliott Road Improvement Project is being designed to minimize right-of-way acquisition along the corridor resulting in four (4) identified parcels along the roadway to reduce the minimum right-of-way per NMC.

- File 7 – 807 N Elliott Road: Varies from 25.5' to 23.5' of Right-of-way with an additional 3' of Public Utility Easement.

- File 9 – 911 N Elliott Road: 23’ of ROW with an additional 3’ of Public Utility Easement. This case has been resolved with the property owner.
- File 10 – 1007 N Elliott Road: 25’ of ROW with an additional 3’ of Public Utility Easement. This case has been resolved with the property owner.
- File 22 – 704 N Elliott Road: Varies from 25’ to 29’ of Right-of-way with an additional 4.5’ of Public Utility Easement. This case has been resolved with the property owner and is in escrow.

D. LOCATION: N Elliott Road



E. SITE INFORMATION:

1. Location: N Elliott Road corridor from E Portland Road (Highway 99W) north to Newberg High School
2. Size: Not applicable
3. Topography: Flat
4. Current Land Uses:
807 N Elliott Road – Single Family Residence

911 N Elliott Road – Single Family Residence

1007 N Elliott Road – Multi-family Residential

704 N Elliott Road – Single Family Residence

5. Natural Features: There are trees, shrubs, and grass yards along the N Elliott Road corridor.

6. Adjacent Land Uses:

807 N Elliott Road

- a. North: Single-family Residential
- b. East: Single-family Residential
- c. South: Single-family Residential
- d. West: Single-family Residential

911 N Elliott Road

- a. North: Multi-family Residential and Single-family Residential
- b. East: Single-family Residential
- c. South: Single-family Residential
- d. West: Single-family Residential

1007 Elliott Road

- a. North: Multi-family Residential
- b. East: Single-family Residential
- c. South: Single-family Residential
- d. West: Single-family Residential

704 N Elliott Road

- a. North: Single-family Residential
- b. East: Commercial
- c. South: Commercial
- d. West: Commercial, Multi-family and Single-family Residential

7. Zoning: The following zoning districts are adjacent the subject properties for the right-of-way reduction width.

807 N Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

911 N Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

1007 Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

704 N Elliott Road

- a. North: R-2
- b. East: C-2
- c. South: C-2
- d. West: C-2/LU and R-2

8. Access and Transportation: Access to for all parcels along N Elliott Road is to N Elliott Road. The four residential lots where the right-of-way width is proposed to be reduced take access from N Elliott Road.

9. Utilities:

- a. Water: The City's GIS system shows there is an existing 8-inch water line in N Elliott Road.
- b. Wastewater: The City's GIS system shows there is an existing 8-inch wastewater line in N Elliott Road.
- c. Stormwater: The City's GIS system shows an intermittent stormwater system along the roadway corridor. Some areas have a stormwater system and other areas do not have a stormwater system.
- d. Overhead Lines: There are overhead utilities serving the properties along

N Elliott Road or running parallel to the property frontages. Any new connection to any of the properties including the four properties where the right-of-way is proposed to be narrowed will need to be undergrounded. See NMC 15.430.010 for exception provisions.

- F. PROCESS:** This Appeal request is a Type III application and follows the procedures in Newberg Development Code 15.100.160, 15.100.170, 15.100.180 and 15.100.190. The appeal period for the Director Decision ended on January 27, 2022, at 4:30 pm. The Planning Commission will hold a quasi-judicial public hearing (new hearing) on the application. The Commission will make a decision on the application based on the Appeal of a Type II decision must be based on the written comments raised prior to the expiration notice comment period pursuant to NMC 15.100.220. The Planning Commission’s decision is final unless appealed. Important dates related to this application are as follows:

Important dates related to this application are as follows:

- a. 11/04/2021: The Community Development Director deemed the application complete.
- b. 11/17/2021: The applicant mailed notice to the property owners within 500 feet of the site.
- c. 12/01/2021: The 14-day public comment period ended.
- d. 1/14/2022: The Community Development Director issued a decision on the application.
- e. 1/25/22: Appeal was filed by Mr. Dan D’hondt, and Rajiv Jain Managing Member of Cedar Terrace LLC, represented by Tyler Smith, Tyler Smith & Associates P.C.
- f. 1/27/22: Appeal period ended at 4:30 pm.
- g. 2/23/22: The *Newberg Graphic* published notice of the Planning Commission hearing.
- h. 2/28/22: Notice mailed to property owners in the N Elliott Road corridor.
- i. 3/10/22: The Planning Commission opened the quasi-judicial public hearing, took testimony, and continued the hearing to April 14, 2022.

- j. 3/23/22: The applicant submitted a letter extending the 120-day local review timeframe by 60-days to May 2, 2022.
- k. 4/14/22: The Planning Commission will hold a continued quasi-judicial public hearing to consider the appeal application.

G. AGENCY COMMENTS: The original Public Works Department, Engineering Division application was routed to several public agencies and City departments for review and comment as part of MISC221-0002. Comments and recommendations from City departments are contained in Attachment 3.

PUBLIC COMMENTS: Public comments as part of MISC221-0002 are contained in Attachment 3.

H. ANALYSIS:

Mr. D’hondt, and Mr. Rajiv Jain Managing Member of Cedar Terrace LLC, through their representative Tyler Smith of Tyler Smith & Associates P.C. filed an appeal of the Community Development Director’s decision (Attachment 1 and Attachment 3) that determined the right-of-way width for the proposed transportation improvement could be reduced at four (4) locations (Attachment 3).

Mr. D’hondt, and Rajiv Jain Managing Member of Cedar Terrace LLC, through Mr. Smith have raised the following issues:

- 1) Newberg Municipal Code requires the Owner of the real property in question to approve of the application or be the applicant. Rajiv Jain and Cedar Terrace, LLC as well as Dan Dhondt; own 704 N Elliot Rd, and 807 N Elliot Rd respectively. They are not the applicant, nor do they approve of land use actions covering their property.
- 2) Your application does not meet any of the criteria of NMC 15.505.030(h)

Mr. Smith further elaborates on his first issue below.

1) Newberg Municipal Code 15.100.090 (b) bars this application from being approved.

NMC 15.100.090 requires that land use application provide PROOF that the property affected by the application is in the exclusive ownership of the applicant, or otherwise have the consent of all owners of the property.

- a. Newberg does not have the consent of my clients Daniel Dhondt, nor Rajiv Jain who is the managing member of Cedar Terrace LLC. The property that they own as fee simple

title owners is included as a part of your application. See Exhibit A-1 of your application packet shows the portion owned by Mr. Dhondt, and See Exhibit D-1 of your application, which shows the portion owned by Cedar Terrace LLC. Thus Mr. Chiu (the Applicant) nor the City of Newberg is the “exclusive owner” of the property, nor does the Applicant have the consent of these two owners. The application must therefore be denied under the NMC. Oregon law is clear on this point. Where a local code provision requires the consent of all property owners affected by a land use application, a present owner must sign the application. Johnston v. City of Albany, 34 Or LUBA 32 (1998).

b. Furthermore, the application page itself, shows that no-owner has signed the application. Mr. Chiu apparently signed for the applicant on October 20,2021but he is neither the owner nor the owner's agent.

Staff Response:

15.100.090 Development permit application.

B. Proof that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has the consent of all owners of the affected property.

The City of Newberg is the road authority over N Elliott Road from E Portland Road (Highway 99W) to Newberg High School. ODOT has jurisdiction over the intersection of N Elliott Road and E Portland Road. The City of Newberg controls the existing right-of-way, and its improvements are subject to the requirements of NMC Chapter 15.505 PUBLIC IMPROVEMENTS STANDARDS, specifically regarding this action on the right-of-way width determination per NMC 15.505.030(G) and the criteria of NMC 15.505.030(H). The City has the authority to design right-of-way improvements per NMC Chapter 15.505 PUBLIC IMPROVEMENTS STANDARDS to determine if the improvements are feasible and under what circumstances the design may impact properties or not, and measures that are available to minimize and/or mitigate the potential impacts. The Public Works Department, Engineering Division filed an application as the road authority for N Elliott Road based on community feedback in preliminary designs that identified potential impacts to four (4) properties that the City is attempting to mitigate by reducing the right-of-way width. At this time there is no land use action (site design review) directly impacting Mr. D’hondt’s property, thus no consent by Mr. D’hondt is necessary on an application. The City as the road authority filed an application to get a determination if a reduction of the right-of-way was feasible or not per NMC 15.505.030(H).

Based on the Appellant’s comments staff requested the applicant prepare a timeline of activities related to the N Elliott Road project based on specific questions. Attachment 3 is a summary of the steps that have occurred and the interactions with property owners along the N Elliott Road corridor. Attachment 4, Question #4 indicates that Mr. D’hondt is the exclusive owner of 807 N Elliott Road and discussions and negotiations with Mr. D'hondt have occurred on that basis for preliminary design and possible acquisition of

right-of-way and easements for the transportation improvement project. The N Elliott Road project file is incorporated by reference related to 807 N Elliott Road.

In addition, Mr. Rajiv Jain, Managing Member of Cedar Terrace LLC has reached a resolution with the City of Newberg and the title company (First American) is working with the Lender (Chase) to get Partial Release through escrow, which may take several more weeks before payment is wired. Thus, Mr. Rajiv Jain, Managing Member of Cedar Terrace LLC has agreed to the reduced right-of-way width.

Mr. Smith raises the case of *Johnston v. City of Albany*, 34 Or LUBA 32 (1998). This case is included in Attachment 4. In this case, in summary, an application was submitted by a private development entity and private property owner for a site design review application for a manufactured home park that that questioned if they owned the property, they were submitting the design review application for. This question pivoted on property included in the application they did not own based on a prior real estate transaction between parties. LUBA determined that the private land ownership in the part of the property that had a provision for reconveyance back to the original seller and successor in interest of that portion of property to be reconveyed was based on timing for sanitary sewer connection is part of the development application without a signed statement indicating that intervenor has obtained the consent of the current property owner. The details in this issue can be found in Attachment 5, Pages 3 – 6. LUBA sustained that the portion of the site design review application that included the property to be reconveyed did not have the current property owner's consent.

The second issue in *Johnston v. City of Albany*, 34 Or LUBA 32 (1998) relates to land owned by the City of Albany, and land that was under public ownership without the public entity consenting that was part of the proposed development. LUBA concluded the City of Albany had not properly consented to the public property to be part of the site design review application (Attachment 5, Pages 6 – 8).

Staff's review in the case cited by Mr. Smith is materially different than a determination for a Modification of Street Right-of-way and Improvement Width as applied for by the City of Newberg Engineering Division. The City of Newberg has not submitted for a site design review application for a development. The City is in the design phase for the N Elliott Road Improvement Project to establish the necessary right-of-way width to finalize the design and acquire the necessary right-of-way and easements to construct the project. Mr. D'hondt has been actively engaged in the design discussions and has negotiated with the City of Newberg's Right-of-Way Agent (Universal Field Services) about possible right-of-way and easement acquisition based on preliminary design and feedback.

Under Mr. Smith's interpretation in his submitted appeal any design concepts for a transportation improvement along a transportation corridor would require any and/or all property owners along the transportation corridor to sign an application to allow a design

concept to be advanced to determine the feasibility, or not, of a project, and what type of mitigation measures may be necessary for the transportation improvement. This interpretation in effect would stop all local government (city and county) transportation improvements outlined in Transportation System Plans and corresponding development regulations from occurring if one or more property owners did not sign an application. Again, this project is in the design phase to determine a final design concept to advance.

Once the impacts of the right-of-way design are known the City would negotiate with a property owner to acquire the necessary right-of-way and easements for the transportation improvements. In Mr. D'hondt's situation if the Engineering Division had not sought the MISC221-0002 determination the City would be bound to negotiate for the required right-of-way width per NMC 15.505.030(G) which is greater than what has been identified as necessary to mitigate the potential impacts to his property.

Mr. Smith further elaborates on his second issue below.

2) Newberg Municipal Code 15.505.030(h) is not met here.

NMC 15.505.030 is cited as the basis for this variance. Modification of Street Right-of-Way and Improvement Width. The director, pursuant to the Type II review procedures of Chapter 15.220 NMC, may allow modification to the public street standards of subsection (G) of this section, when the criteria in both subsections (H)(1) and (2) of this section are satisfied:

" The modification is necessary to provide design flexibility in instances where:

- a. Unusual topographic conditions require a reduced width or grade separation of improved surfaces; or
- b. Lot shape or configuration precludes accessing a proposed development with a street which meets the full standards of this section; or
- c. A modification is necessary to preserve trees or other natural features determined by the city to be significant to the aesthetic character of the area; or
- d. A planned unit development is proposed and the modification of street standards is necessary to provide greater privacy or aesthetic quality to the development."

Each of those four possible alternatives is not met.

(a) Here, there is no unusual topographic condition, the City is simply proposing to widening the street against the wishes of these owners. Proposing to enter onto these owners lots, take their property for public use and establish wider easements and rights of way over Cedar Terrace.

(b) The lot shape and configuration is not affective access at all since the access will exist either way and these properties are already street frontage properties.

(c) There have not yet been any findings nor assertions about which trees are being determined to be significant, but the opponents agree there are some important and significant trees that should not be disturbed by the proposed plan.

(d) No planned unit development is proposed.

CONCLUSION

This application cannot be approved because the owners of at least some of the property in question are not the applicant, and have not consented to this application. This violates the NMC and Oregon law.

Staff Response:

To begin this is not a variance request as identified by Mr. Smith. Variances are a separate process in the NMC under Chapter 15.215 VARIANCE PROCEDURES. The Applicant submitted their application under NMC 15.505.030(H) to seek a determination on Modification of Street Right-of-Way and Improvement Width.

There are four sub-criteria to NMC 15.505.030H.1. All four are not required to be met as the sentence structure identifies. One of the sub-criteria is sufficient to satisfy a determination for a reduced right-of-way width for the design of the N Elliott Road improvement. These are addressed in detail in Attachment 3 of the Findings. In summary:

- a. Attachment 3 in the Findings section indicates that topographic issues are not applicable the applicant's request for a modification to the right-of-way width.
- b. Attachment 3 indicates that this issue only applied to 704 N Elliott Road. Access will be maintained, and three parking spaces will be relocated on site per the negotiated settlement between the property owner and the City.

There were no issues identified for Mr. D'hondt's property at 807 N Elliott Road.

- c. Attachment 3 in the Findings indicates that at 807 N Elliott Road (D'hondt property) the narrowed right-of-way design would preserve two (2) existing palm trees which are unique to the neighborhood area.
- d. Attachment 3 in the Findings indicates that this criterion is not applicable as the transportation design proposal is not part of a planned unit development

Mr. Smith has also included information stating:

“There are other options, such as downgrading the street category of Elliot Rd., delaying

this action, and reducing the impacts and condemnations of the owners' property that are preferred. While we appreciate this attempt to minimize the taking of private property for public use, nonetheless we oppose your attempts to condemn and take my client's private property for your preferred use and plan. My clients and other interested community members have suggested alternatives, and alternate plans.”

Staff Response:

The Planning Commission’s purview in this matter is narrowly focused on the issue of 15.505.030(G) and the criteria of 15.505.030(H) related to Modification of Street Right-of-Way and Improvement Width. It is not the Planning Commission’s role to evaluate options (beyond a full width improvement or reduced width improvement along the frontage of the four identified properties), or delaying the proposed design and construction of the transportation improvement. The Planning Commission has no authority to condemn property and has no authority over the reference to suggested alternatives cited by Mr. Smith along the transportation corridor. These issues are for the City Council to consider and to provide direction to the Engineering Division.

As noted under section **B. PLANNING COMMISSION MARCH 10, 2022 HEARING** above the City Council has provided direction to staff on evaluating an alternative design along the frontage of Mr. D’hondt’s property.

- H. PRELIMINARY STAFF RECOMMENDATION:** The preliminary staff recommendation is made in the absence of public hearing testimony and may be modified subsequent to the close of the public hearing. At the time this report was drafted, staff recommends the following motion:

Move to adopt Planning Commission Order 2022-04, which approves the January 14, 2022 Community Development Director Decision



PLANNING COMMISSION ORDER 2022-04

AN ORDER APPROVING THE JANUARY 14, 2022, COMMUNITY DEVELOPMENT DIRECTOR DECISION MISC221-0002

RECITALS

1. Paul Chiu, Senior Engineer, City of Newberg Public Works Department, Engineering Division applied for a Type II Modification of Street Right-of-Way and Improvement Width as part of the proposed N Elliott Road Improvement Project.
2. On January 14, 2022, the Community Development Director issued a decision on the submitted application for a determination on the Modification of Street Right-of-Way and Improvement Width.
3. On January 25, 2022, Mr. Dan D'hondt, and Mr. Rajiv Jain Managing Member of Cedar Terrace LLC, represented Mr. Tyler Smith of Tyler Smith & Associates P.C. filed an appeal of the decision.
4. The City of Newberg has reached agreement with the property owners on the right-of-way width for 911 N Elliott Road and 1007 N Elliott Road.
5. Mr. Rajiv Jain, Managing Member of Cedar Terrace LLC, a party to the submitted appeal, has reached a resolution with the City of Newberg on the design of the right-of-way width and is in escrow to close that right-of-way acquisition for 704 N Elliott Road.
6. After proper notice, the Newberg Planning Commission held a public hearing on March 10, 2022, to consider the appeal and continued the hearing to April 14, 2022.
7. The Planning Commission continued the public hearing on April 14, 2022 to consider the appeal and considered testimony and deliberated.
8. The Newberg Planning Commission finds that the application meets the applicable Newberg Municipal Code criteria as shown in the findings in Exhibit "A" of the January 14, 2022, Community Development Director Decision on MISC221-0002.

The Newberg Planning Commission orders as follows:

1. The appeal application APL22-0001 is hereby denied.
2. The January 14, 2022, Community Development Director Decision on MISC221-0002 (Exhibit "A") is hereby approved. Exhibit "A" is hereby adopted and by this reference incorporated.

3. The findings shown in Exhibit “A” of the January 14, 2022, Community Development Director Decision on MISC221-0002 (Exhibit “A”) are hereby adopted. Exhibit "A" is hereby adopted and by this reference incorporated.
4. This order shall be effective April 28th, 2022.

Adopted by the Newberg Planning Commission this 14th day of April 2022.

ATTEST:

Planning Commission Chair

Planning Commission
Secretary

List of Exhibits:

Exhibit “A”: January 14, 2022, Community Development Director Decision and Findings

**Exhibit “A” to Planning Commission Order 2022-04
January 14, 2022 Community Development Director Decision
and Findings – File APL22-0001**



Community Development

January 14, 2022

Mr. Paul Chiu
City of Newberg
414 E First Street
Newberg, OR 97132

Parties Providing Comments: Gerry Avoilo, Miguel Gonzales, Brandy Crockett, James Talt, Tyler Smith

Dear Mr. Chiu,

The Newberg Community Development Director has provided a determination based on your application MISC221-0002 Elliott Road Improvement Project. The decision will become effective on January 28, 2022, unless an appeal is filed.

You may appeal this decision to the Newberg Planning Commission within 14 calendar days of this decision in accordance with Newberg Development Code 15.100.170. All appeals must be in writing on a form provided by the Planning Division. Anyone wishing to appeal must submit the written appeal form together with the required fee of \$550.20 to the Planning Division within 14 days of the date of this decision.

The deadline for filing an appeal is 4:30 pm on January 27, 2022

If you have any questions, please contact me at doug.rux@newbergoregon.gov or 503-537-1212.
Sincerely,

A handwritten signature in blue ink, appearing to read "Doug Rux", is enclosed in a thin black rectangular box.

Doug Rux, AICP
Community Development Director

Attachment

STAFF REPORT Determination – N Elliott Road – MISC221-0002

FILE NO: MISC221-0002

REQUEST: Reduce the right-of-way width design for four properties for improvements to N Elliott Road

LOCATION: N Elliott Road (Highway 99W to Newberg High School)

TAX LOT(S): The lots impacted by a reduced ROW width include R3217DB 06201, R3217DB 06200, R3217DB 06001, R3217DD 02501

APPLICANT: Paul Chiu, City of Newberg

OWNER: N/A

ZONE: Low Density Residential District (R-1), High Density Residential (R-3)

PLAN DISTRICT: LDR (Low Density Residential), HDR (High Density Residential)

CONTENTS

Section I: Application Information
Section II: Exhibit A Findings

Attachments:

1. Application
2. Public Comments

Section I: Application Information

A. DESCRIPTION OF APPLICATION:

The development would include right of way improvements for the N Elliott Road corridor from Highway 99W to Newberg High School. Proposed improvements include pavement, curb and gutter, sidewalk, ADA ramps, bicycle lanes, storm drainage, wastewater pipeline, water main, street lighting, conversion from aerial to underground power lines, traffic calming and roadway safety features, and landscape enhancement. Along the length of the roadway improvement the roadway would be narrowed below the 28.5' for a ½ street width improvement in front of four (4) parcels.

NMC 15.505.030(G) Street Width & Design Standards for Major Collector is 36' curb-to-curb (2-12' travel lanes, 2-6' bike lanes), 2-5' planter strips, 2-5' sidewalks → Total 56' of physical improvements. Typical sections show an additional 0.5' behind sidewalk to ROW. This gives a minimum ROW width of 57' as noted in NMC, or 28.5' for a ½ Street width.

The Elliott Road Improvement Project is minimizing Right-of-way acquisition along the corridor resulting in four (4) parcels requiring less than the minimum right-of-way per NMC.

- File 7 – 807 N Elliott Road: Varies from 25.5' to 23.5' of Right-of-way with an additional 3' of Public Utility Easement.
- File 9 – 911 N Elliott Road: 23' of ROW with an additional 3' of Public Utility Easement.
- File 10 – 1007 N Elliott Road: 25' of ROW with an additional 3' of Public Utility Easement.
- File 22 – 704 N Elliott Road: Varies from 25' to 29' of Right-of-way with an additional 4.5' of Public Utility Easement.

B. SITE INFORMATION:

1. Location: N Elliott Road corridor from Highway 99W north to Newberg High School
2. Size: Not applicable
3. Topography: Flat
4. Current Land Uses:
807 N Elliott Road – Single Family Residence

911 N Elliott Road – Single Family Residence

1007 N Elliott Road – Multi-family Residential

704 N Elliott Road – Single Family Residence

5. Natural Features: There are trees, shrubs, and grass yard along the N Elliott Road corridor.

6. Adjacent Land Uses:

807 N Elliott Road

- a. North: Single-family Residential
- b. East: Single-family Residential
- c. South: Single-family Residential
- d. West: Single-family Residential

911 N Elliott Road

- a. North: Multi-family Residential and Single-family Residential
- b. East: Single-family Residential
- c. South: Single-family Residential
- d. West: Single-family Residential

1007 Elliott Road

- a. North: Multi-family Residential
- b. East: Single-family Residential
- c. South: Single-family Residential
- d. West: Single-family Residential

704 N Elliott Road

- a. North: Single-family Residential
- b. East: Commercial
- c. South: Commercial
- d. West: Commercial, Multi-family and Single-family Residential

7. Zoning: The following zoning districts are adjacent the subject properties for the right-of-way reduction width.

807 N Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

911 N Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

1007 Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

704 N Elliott Road

- a. North: R-2
- b. East: C-2
- c. South: C-2
- d. West: C-2/LU and R-2

8. Access and Transportation: Access to for all parcels along N Elliott Road is to N Elliott Road. The four residential lots where the right-of-way width is proposed to be reduced take access from N Elliott Road.

9. Utilities:

- a. Water: he City’s GIS system shows there is an existing 8-inch water line in N Elliott Road.
- b. Wastewater: The City’s GIS system shows there is an existing 8-inch wastewater line in N Elliott Rad.
- c. Stormwater: The City’s GIS system shows an intermittent stormwater system along the roadway corridor. Some areas have a stormwater system and other areas do not have a stormwater system.
- d. Overhead Lines: There are overhead utilities serving the properties along

N Elliott Road or running parallel to the property frontages. Any new connection to any of the properties including the four properties where the right-of-way is proposed to be narrowed will need to be undergrounded. See NMC 15.430.010 for exception provisions.

- C. PROCESS:** The Determination is a Type II application and follows the procedures in Newberg Development Code 15.100.030. Following a 14-day public comment period, the Community Development Director makes a decision on the application based on the criteria listed in the attached findings. The Director’s decision is final unless appealed.

Important dates related to this application are as follows:

- a. 11/04/2021: The Community Development Director deemed the application complete.
- b. 11/17/2021: The applicant mailed notice to the property owners within 500 feet of the site.
- c. 12/01/2021: The 14-day public comment period ended.
- d. 1/14/2022: The Community Development Director issued a decision on the application.

- D. AGENCY COMMENTS:** The application was routed to several public agencies for review and comment (Attachment 1). Comments and recommendations from city departments have been incorporated into the findings and conditions. As of the writing of this report, the city received the following agency comments:

City Manager: Reviewed, no conflict

Finance: Reviewed, no conflict

Police: Reviewed, no conflict

Public Works Maintenance: Reviewed, no conflict.

Public Works Superintendent: Reviewed, no conflict.

Public Works Director: Reviewed, no conflict

Public Works Wastewater Treatment Plant: Reviewed, no conflict

- E. PUBLIC COMMENTS:**

Public comments (summarized) were received from the following parties and are included in full Attachment 2.

1. Gerry Avoilo: Provided four comments. 1) Surprised by the extent of the work and the cost of over \$3M to dress up a road to the high school. 2) Understands and supports the need for sidewalks on both sides of Elliott Road for safety and convenience of pedestrians. To do so would require a part of his front yard. 3) He walks every week and notes any streets do not have sidewalks on both sides, some street with no sidewalks, some streets with sidewalks on only one side, and many sidewalks are in need of repair. He comments that if the N Elliott Road project was to only install sidewalks that excess funds should be used to repair old sidewalk in the city. 4) He was informed that widening the road was necessary to help reduce traffic speed. He inquired about permeant speed camera installation to reduce the speeding problem.

Staff Response: 1) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not address the criteria of 15.505.030H.1.a.-d. The cost of the project should be addressed directly to the Public Works Engineering Division. 2) Mr. Avoilo's property is one of the properties where the applicant has requested a narrower right-of-way width for the N Elliott Road improvements. The Applicant is working to acquire right-of-way for the improvements which will include a sidewalk. 3) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not address the criteria of 15.505.030H.1.a.-d. This comment will be forwarded to the applicant for consideration in the sign of the N Elliott Road improvement. 4) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not address the criteria of 15.505.030H.1.a.-d. This comment will be forwarded to the applicant for consideration in the sign of the N Elliott Road improvement.

2. Miguel Gonzales: Provided comments in response to the process being utilized. 1) He does approve the Type II application. 2) The owner of the property must approve the application and sign the application. 3) the city does not meet the requirements of 15.505.030(h) because owners did not sign the application. 4) Attached section of the Code he believes are applicable. 5) The city has not made serious efforts to address concerns raised by residents.

Staff Response: NMC 15.505.030H.1.a.-d. and 2 are applicable to the applicant's request. Specifically, "H. Modification of Street Right-of-Way and Improvement Width. The director, pursuant to the Type II review procedures of Chapter 15.220 NMC, may allow modification to the public street standards of subsection (G) of this section, when the criteria in both subsections (H)(1) and (2) of this section are satisfied: ..." The Applicant submitted an application to address a modification to the design for the right-of-way width for the N Elliott Road project to reduce the right-of-way width along the frontage of four properties. As the Road Authority the City of Newberg is designing a future transportation improvement. This design will determine the right-of-way necessary to acquire where insufficient right-of-way exists for a future transportation improvement. The application did not require property owner signature for the Applicant to request a determination if a reduced right-of-way width is feasible to minimize impacts along the transportation corridor. Without the application request by the Applicant the transportation design would have to meet the requirements of NMC 15.505.030 G. Street Width and Design Standards requiring more right-of-way than may be necessary. Any right-of-way acquisition would be negotiated. 2) As noted above the property owner was not required to sign the application as the

Applicant is requesting a determination to reduce the right-of-way width along the frontage of four properties. 3) The Applicant submitted an application to determine if a narrower right-of-way width can be approved following the procedures laid out in NMC 15.505.030H.1.a.-d. and 2. 5) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not respond the criteria of 15.505.030H.1.a.-d. This comment will be forwarded to the applicant for consideration in the design of the N Elliott Road improvement.

3. Brandy Crockett: Provided comments in response to 1) Opposition to bike lanes on N Elliott Road. 2) Point 1 is to the actual number of people that will use the bike lanes. Point 2 is the City Council wants bike lanes for students to commuting to school but the number of bikes in racks at the High School is low. Point 3 is that most bike users don't use bike lanes and ride with traffic or children use the sidewalk. Point 4 is the 10 year plan to take away street parking for bike lanes from Haworth and Deborah to make connecting bike lanes to Elliott Road.

Staff Response: The Applicant's request is for a determination of the necessary right-of-way related to four properties along N Elliott Road. The general comment of opposition to bike lanes and to the 4 points raised do not respond to the requirements of NMC 15.505.030H.1.a.-d. and 2. The comments will be forwarded to the applicant for consideration in the design of the N Elliott Road improvement.

4. James Talt: Mr. Talt provided comments requesting modifications to the Type II Land Use Application based on four requests. A) Fast track the completion of bike lanes on Deborah Road from 99W to Haworth and designate both sides as no parking. B) Reclassify Elliott Road from a Major Collector to a Local Residential Street. Add needed road improvements for safety, accessibility, ADA, drainage, etc. and with no-street parking and shared land markings for bikes from Haworth south to 99W. C) Omit Plater strips. D) Add road improvements per (B) above and create bike lanes from Haworth north to the High School. Designate no street parking on this one block stretch.

Staff Response: The submitted application is specific to a modification to the right-of-way width along N Elliott Road related to four property frontages. The submitted comments do not respond to the criteria of NMC 15.505.030H.1.a.-d. and 2. The comments will be forwarded to the applicant for consideration in the design of the N Elliott Road improvement.

5. Tyler Smith: Mr. Smith provided comments indicating 1) Newberg Municipal Code requires the Owner of the real property in question to approve of the application or be the applicant. Rajiv Jain and Cedar Terrace, LLC as well as Dan Dhondt, own 704 N Elliot Rd, and 807 N Elliot Rd respectively. They are not the applicant, nor do they approve of land use actions covering their property. 2) Your application does not meet any of the criteria of NMC 15.505.030(h)

Staff Response: The Applicant submitted an application to address a modification to the design for the right-of-way width for the N Elliott Road project to reduce the right-of-way width along the frontage of four properties. As the Road Authority the City of Newberg is designing a future transportation improvement. This design will determine the right-of-way necessary to acquire where insufficient right-of-way exists for a future transportation improvement. The application did not require property owner signature for the Applicant to request a determination if a reduced

right-of-way width is feasible to minimize impacts along the transportation corridor. Without the application request by the Applicant the transportation design would have to meet the requirements of NMC 15.505.030 G. Street Width and Design Standards requiring more right-of-way than may be necessary. Any right-of-way acquisition would be negotiated.

Mr. Smith's comments regarding NMC 15.505.030(h) are addressed below in the findings section of this report.

**Section II: Findings – File MISC221-0002
Determination – N Elliott Road**

15.505.030 Street standards.

H. Modification of Street Right-of-Way and Improvement Width. The director, pursuant to the Type II review procedures of Chapter 15.220 NMC, may allow modification to the public street standards of subsection (G) of this section, when the criteria in both subsections (H)(1) and (2) of this section are satisfied:

1. The modification is necessary to provide design flexibility in instances where:

a. Unusual topographic conditions require a reduced width or grade separation of improved surfaces; or

Finding: Not applicable.

b. Lot shape or configuration precludes accessing a proposed development with a street which meets the full standards of this section; or

Finding: The Applicant indicates the property at 704 N Elliott Road requires a 6-inch narrower street right-of-way from the 60-foot full width at the north corner of the existing multi-dwelling development to preserve the loss of an existing parking spaces and to minimize impact to the existing lot configuration according to subsection (H)(1)(b). The south portion of this lot does not have a right-of-way issue. Three parking spaces would be relocated as part of the roadway improvement to another relocation of the 704 N Elliott Road site as mitigation.

Staff concurs with the applicant because of the effort to minimize the displacement of parking at on the north side of the access point into the development.

c. A modification is necessary to preserve trees or other natural features determined by the City to be significant to the aesthetic character of the area; or

Finding: The applicant indicates the properties at 807 N Elliott Road and 911 N Elliott Road requires modification of street right-of-way width because of the necessity to preserve existing trees and to minimize impact to the green features of the N Elliott Road corridor according to subsection (H)(1)(c). At 807 N Elliott Rod the narrowed right-of-way design would preserve two (2) existing palm trees which are unique to the neighborhood area. At 911 NE Elliott Road the narrowed right-of-way design preserves five (5) deciduous trees which is part of the neighborhood character.

The property at 1007 N Elliott Road requires transition of the narrower street right-of-way to full width to the north as a result of preserving existing trees to the south according to subsection (H)(1)(c).

Staff concurs with the applicant because narrowing the right-of-way design preserve trees and allows for transitions to occur from where the right-of-way is narrowed back to its full width required by NMC 15.505.030 G.

d. A planned unit development is proposed and the modification of street standards is necessary to provide greater privacy or aesthetic quality to the development.

Finding: Not applicable as the proposal is not part of a planned unit development .

2. Modification of the standards of this section shall only be approved if the director finds that the specific design proposed provides adequate vehicular access based on anticipated traffic volumes.

Finding: The narrowed right-of-way design at four (4) locations provides adequate vehicular access based on anticipated traffic volumes for N Elliott Road. The design includes travel lanes, bike lanes, and sidewalk to allow for multi-modal access along the transportation corridor.

***Type II Review Procedures of Chapter 15.220
15.220.020 Site design review applicability.***

A. Applicability of Requirements. Site design review shall be required prior to issuance of building permits or commencement of work for all improvements noted below. Site design review permits shall be processed as either Type I or Type II, as noted below.

2. Type II.

a. Any new development or remodel which is not specifically identified within subsection (A)(1) of this section.

b. Telecommunications facilities.

Finding: The requested determination is not new development or remodel which is not specifically identified within subsection (A)(1) of this section and is not a telecommunications facility. These criteria do not apply.

15.220.030 Site design review requirements.

B. Type II. The following information is required to be submitted with all Type II applications for site design review:

1. Site Development Plan. A site development plan shall be to scale and shall indicate the following as appropriate to the nature of the use:

- a. Access to site from adjacent right-of-way, streets and arterials;*
- b. Parking and circulation areas;*
- c. Location and design of buildings and signs;*
- d. Orientation of windows and doors;*
- e. Entrances and exits;*
- f. Private and shared outdoor recreation spaces;*
- g. Pedestrian circulation;*
- h. Outdoor play areas;*
- i. Service areas for uses such as mail delivery, trash disposal, above-ground utilities, loading and delivery;*
- j. Areas to be landscaped;*
- k. Exterior lighting;*
- l. Special provisions for handicapped persons;*
- m. Other site elements and spaces which will assist in the evaluation of site development;*
- n. Proposed grading, slopes, and proposed drainage;*
- o. Location and access to utilities including hydrant locations; and*
- p. Streets, driveways, and sidewalks.*

2. Site Analysis Diagram. *A site analysis diagram shall be to scale and shall indicate the following characteristics on the site and within 100 feet of the site:*

- a. Relationship of adjacent lands;*
- b. Location of species of trees greater than four inches in diameter at four feet above ground level;*
- c. Existing and proposed topography;*

d. Natural drainage and proposed drainage and grading;

e. Natural features and structures having a visual or other significant relationship with the site.

3. Architectural Drawings. *Architectural drawings shall be prepared which identify floor plans and elevations.*

4. Landscape Plan. *The landscape plan shall indicate:*

a. The size, species and approximate locations of plant materials to be retained or placed on the site together with a statement which indicates the mature size and canopy shape of all plant materials;

b. Proposed site contouring; and

c. A calculation of the percentage of the site to be landscaped.

5. Special Needs for Handicapped. *Where appropriate, the design review plan shall indicate compliance with handicapped accessibility requirements including, but not limited to, the location of handicapped parking spaces, the location of accessible routes from the entrance to the public way, and ramps for wheelchairs.*

6. Existing Features and Natural Landscape. *The plans shall indicate existing landscaping and existing grades. Existing trees or other features intended to be preserved or removed shall be indicated on the plans.*

7. Drives, Parking and Circulation. *Proposed vehicular and pedestrian circulation, parking spaces, parking aisles, and the location and number of access points shall be indicated on the plans. Dimensions shall be provided on the plans for parking aisles, back-up areas, and other items as appropriate.*

8. Drainage. *The direction and location of on- and off-site drainage shall be indicated on the plans. This shall include, but not be limited to, site drainage, parking lot drainage, size and location of storm drain lines, and any retention or detention facilities necessary for the project.*

9. Buffering and Screening. *Buffering and screening of areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures shall be shown on the plans.*

10. Signs and Graphics. *The location, colors, materials, and lighting of all exterior signs, graphics or other informational or directional features shall be shown on the plans.*

11. Exterior Lighting. Exterior lighting within the design review plan shall be indicated on the plans. The direction of the lighting, size and type of fixtures, and an indication of the amount of lighting shall be shown on the plans.

12. Trash and Refuse Storage. All trash or refuse storage areas, along with appropriate screening, shall be indicated on the plans. Refuse storage areas must be constructed of brick, concrete block or other similar products as approved by the director.

13. Roadways and Utilities. The proposed plans shall indicate any public improvements that will be constructed as part of the project, including, but not limited to, roadway and utility improvements.

14. Traffic Study. A traffic study shall be submitted for any project that generates in excess of 40 trips per p.m. peak hour. This requirement may be waived by the director when a determination is made that a previous traffic study adequately addresses the proposal and/or when off-site and frontage improvements have already been completed which adequately mitigate any traffic impacts and/or the proposed use is not in a location which is adjacent to an intersection which is functioning at a poor level of service. A traffic study may be required by the director for projects below 40 trips per p.m. peak hour where the use is located immediately adjacent to an intersection functioning at a poor level of service. The traffic study shall be conducted according to the City of Newberg design standards.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. and is not applicable. The application request is for a determination per NMC 15.505.030H.1.a.-d. and 2 if a narrower right-of-way width can be utilized than required per NMC 15.505.030 G for a minor collector roadway. At 704 N Elliott Road 3 parking spaces will be relocated as litigation to another relocation on the site. At 807 N Elliott Road the reduced right-of-way width would maintain setbacks to the structure of 23-24 feet and to the garage of 24 feet which exceeds the requirements of NMC 15.410.020A1 and 15.410.020A.

15.220.050 Criteria for design review (Type II process).

B. Type II. The following criteria are required to be met in order to approve a Type II design review request:

1. Design Compatibility. The proposed design review request incorporates an architectural design which is compatible with and/or superior to existing or proposed uses and structures in the surrounding area. This shall include, but not be limited to, building architecture, materials, colors, roof design, landscape design, and signage.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Design Compatibility is not applicable

because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220.

2. Parking and On-Site Circulation. Parking areas shall meet the requirements of NMC 15.440.010. Parking studies may be required to determine if adequate parking and circulation are provided for uses not specifically identified in NMC 15.440.010. Provisions shall be made to provide efficient and adequate on-site circulation without using the public streets as part of the parking lot circulation pattern. Parking areas shall be designed so that vehicles can efficiently enter and exit the public streets with a minimum impact on the functioning of the public street.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Parking and On-Site Circulation is not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

3. Setbacks and General Requirements. The proposal shall comply with NMC 15.415.010 through 15.415.060 dealing with height restrictions and public access; and NMC 15.405.010 through 15.405.040 and 15.410.010 through 15.410.070 dealing with setbacks, coverage, vision clearance, and yard requirements.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Setbacks and General Requirements is not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

4. Landscaping Requirements. The proposal shall comply with NMC 15.420.010 dealing with landscape requirements and landscape screening.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Landscaping Requirements is not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

5. Signs. Signs shall comply with NMC 15.435.010 et seq. dealing with signs.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Signs are not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to

reduce the right-of-way width at selected locations.

6. Manufactured Dwelling, Mobile Home and RV Parks. Manufactured dwelling and mobile home parks shall also comply with the standards listed in NMC 15.445.075 through 15.445.100 in addition to the other clear and objective criteria listed in this section. RV parks also shall comply with NMC 15.445.170 in addition to the other criteria listed in this section.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Manufactured Dwelling, Mobile Home and RV Parks are not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

7. Zoning District Compliance. The proposed use shall be listed as a permitted or conditionally permitted use in the zoning district in which it is located as found in NMC 15.305.010 through 15.336.020. Through this site review process, the director may make a determination that a use is determined to be similar to those listed in the applicable zoning district, if it is not already specifically listed. In this case, the director shall make a finding that the use shall not have any different or more detrimental effects upon the adjoining neighborhood area than those specifically listed.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Transportation facilities and improvements are a permitted use per 15.305.010. The N Elliott Road transportation corridor is in the C-2 (Community Commercial), R-1 (Low Density Residential), R-2 (Medium Density Residential) and R-3 (High Density Residential) zones.

8. Subdistrict Compliance. Properties located within subdistricts shall comply with the provisions of those subdistricts located in NMC 15.340.010 through 15.348.060.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. The N Elliott Road transportation corridor is in the Airport Overlay (Airport Transition Surface and Airport Inner Horizontal Surface). The northern portion of N Elliott Road is in the Marijuana Exclusion area.

9. Alternative Circulation, Roadway Frontage Improvements and Utility Improvements. Where applicable, new developments shall provide for access for vehicles and pedestrians to adjacent properties which are currently developed or will be developed in the future. This may be accomplished through the provision of local public streets or private access and utility easements. At the time of development of a parcel, provisions shall be made to develop the adjacent street frontage in accordance with city street standards and the standards contained in the transportation plan. At the

discretion of the city, these improvements may be deferred through use of a deferred improvement agreement or other form of security.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. No new developments are proposed by the application request. N Elliott Road does provide access to existing commercial and residential development along the transportation corridor. No development of a parcel is proposed.

10. Traffic Study Improvements. If a traffic study is required, improvements identified in the traffic study shall be implemented as required by the director.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. No traffic study was required or prepared for the design of improvements to N Elliott Road.

CONCLUSION:

The proposed determination request to narrow the right-of-way cross-section at four locations along the N Elliott Road corridor satisfies the approval and is approved.

Attachment 1: Application Material



TYPE II APPLICATION – LAND USE

File #: _____

TYPES – PLEASE CHECK ONE:

- Design review
- Tentative Plan for Partition
- Tentative Plan for Subdivision
- Type II Major Modification
- Variance _____
- Other: (Explain) _____

APPLICANT INFORMATION:

APPLICANT: _____
 ADDRESS: _____
 EMAIL ADDRESS: _____
 PHONE: _____ MOBILE: _____ FAX: _____
 OWNER (if different from above): _____ PHONE: _____
 ADDRESS: _____
 ENGINEER/SURVEYOR: _____ PHONE: _____
 ADDRESS: _____

GENERAL INFORMATION:

PROJECT NAME: _____ PROJECT LOCATION: _____
 PROJECT DESCRIPTION/USE: _____ PROJECT VALUATION: _____
 MAP/TAX LOT NO. (i.e.3200AB-400): _____ ZONE: _____ SITE SIZE: _____ SQ. FT. ACRE
 COMP PLAN DESIGNATION: _____ TOPOGRAPHY: _____
 CURRENT USE: _____
 SURROUNDING USES:
 NORTH: _____ SOUTH: _____
 EAST: _____ WEST: _____

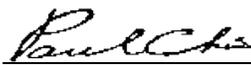
SPECIFIC PROJECT CRITERIA AND REQUIREMENTS ARE ATTACHED

General Checklist: Fees Public Notice Information Current Title Report Written Criteria Response Owner Signature

For detailed checklists, applicable criteria for the written criteria response, and number of copies per application type, turn to:

Design Reviewp. 12
Partition Tentative Platp. 14
Subdivision Tentative Platp. 17
Variance Checklistp. 20

The above statements and information herein contained are in all respects true, complete, and correct to the best of my knowledge and belief. Tentative plans must substantially conform to all standards, regulations, and procedures officially adopted by the City of Newberg. All owners must sign the application or submit letters of consent. Incomplete or missing information may delay the approval process.

 10/20/21

 Applicant Signature Date

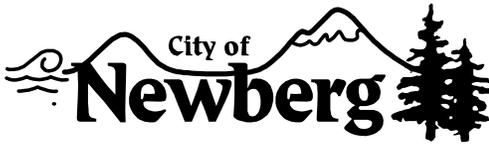
 Owner Signature Date

Paul Chiu

 Print Name

 Print Name

CITY OF NEWBERG TYPE II
SAMPLE MAILED NOTICE



Community Development Department

P.O. Box 970 ▪ 414 E First Street ▪ Newberg, Oregon 97132
503-537-1240. Fax 503-537-1272 www.newbergoregon.gov

**WE WANT YOUR COMMENTS ON A PROPOSED NEW
DEVELOPMENT IN YOUR NEIGHBORHOOD**

The Elliott Road project manager submitted an application to the City of Newberg for Type II Determination. See below for details. You are invited to take part in the City's review of this project by sending in your written comments. You also may request that the Planning Commission hold a hearing on the application. The applicable criteria used to make a decision on this application for preliminary subdivision plan approval are found in Newberg Development Code 15.235.050(A). For more details about giving comments, please see the back of this sheet.

The development would include *(briefly describe what the project number of lots, size of lots, new streets created, etc.)*

APPLICANT: ***Paul Chiu (Elliott Road Project Manager)***
TELEPHONE: ***(503) 554-1751***

PROPERTY OWNER: ***City of Newberg (Elliott Road right-of-way)***

LOCATION: ***Elliott Road from Hwy 99W to Newberg High School***

TAX LOT NUMBER: ***Yamhill County TL 3217DB-06201, TL 3217DB-06200, TL 3217DB-06100,
and TL 3217DD-02501 (Elliott Road residential)***



We are mailing you information about this project because you own land within 500 feet of the proposed new project. We invite you to send any written comments for or against the proposal within 14 days from the date this notice is mailed. You also may request that the Newberg Planning Commission hold a hearing on the application by sending a written request during this 14-day period and identifying the issues you would like the Planning Commission to address.

If you mail your comments to the City, please put the following information on the outside of the envelope:

Written Comments: File No.XX
City of Newberg
Community Development
PO Box 970
Newberg, OR 97132

(City staff will give you the file number for your project at the time of application)

All written comments must be turned in by 4:30 p.m. on ***enter date two weeks from date you mailed notice***. Any issue which might be raised in an appeal of this case to the Land Use Board of Appeals (LUBA) must be submitted to the City in writing before this date. You must include enough detail to enable the decision maker an opportunity to respond. The applicable criteria used to make a decision on this application for preliminary subdivision plan approval are found in Newberg Development Code 15.235.050(A).

You can look over all the information about this project or drop comments off at Newberg City Hall, 414 E. First Street. You can also buy copies of the information for a cost of 25 cents a page. If you have any questions about the project, you can call the Newberg Planning Division at 503-537-1240.

The Community Development Director will make a decision at the end of a 14-day comment period. If you send in written comments about this project, you will be sent information about any decision made by the City relating to this project.

Date Mailed: ***Date notice is mailed***

PLANNING DIVISION FILE #: _____

**CITY OF NEWBERG
AFFIDAVIT OF NOTICING**

REFERENCE ATTACHED LIST(S)/NOTICE(S)

I, Paul Chiu (Elliott Rd Prj Mgr) do hereby certify that the attached Notice of Land Use Action was:

- a) mailed to the following list of property owners, by United States mail, postage prepaid
on _____;
(date)
- b) posted on the site according to standards established in Newberg Development Code §15.100.260
on N/A _____.
(date)

I acknowledge that failure to mail the notice in a timely manner constitutes an agreement by the applicant to defer the 120-day process limit and acknowledge that failure to mail will result in the automatic postponement of a decision on the application 15.100.210.(D)(2) _____.
(date)

Signature Date

Paul Chiu
Print name

Date: 10/20/21

RE: Elliott Road Improvement Project
WRITTEN STATEMENT FOR TYPE II DETERMINATION

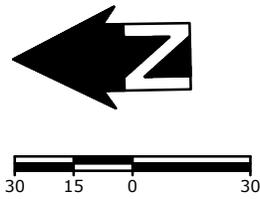
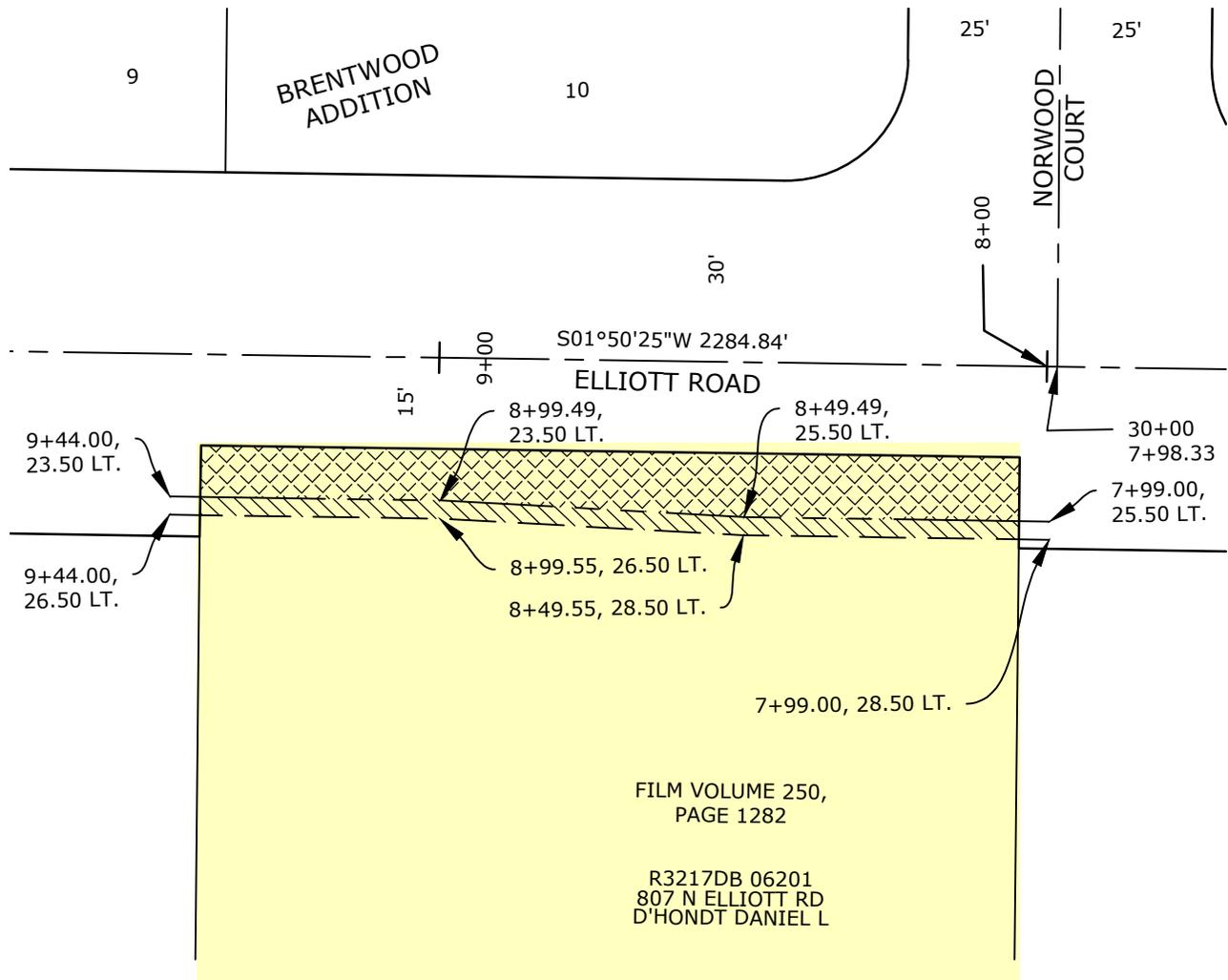
Given the following:

- NMC Section 15.505 applies to this Elliott Road Improvement Project, a capital improvement project.
- NMC 15.505.030(G) Street Width & Design Standards for Major Collector is 36' curb-to-curb (2-12' travel lanes, 2-6' bike lanes), 2-5' planter strips, 2-5' sidewalks → Total 56' of physical improvements. Typical sections show an additional 0.5' behind sidewalk to ROW. This gives a minimum ROW width of 57' as noted in NMC, or 28.5' ½ Street width.
- The Elliott Road Improvement Project is minimizing Right-of-way acquisition along the corridor resulting in four (4) parcels acquiring less than the minimum per NMC.
 - o File 7 – 807 Elliott Road: Varies from 25.5' to 23.5' of Right-of-way with an additional 3' of Public Utility Easement.
 - o File 9 – 911 Elliott Road: 23' of ROW with an additional 3' of Public Utility Easement.
 - o File 10 – 1007 Elliott Road: 25' of ROW with an additional 3' of Public Utility Easement.
 - o File 22 – 704 Elliott Road: Varies from 25' to 29' of Right-of-way with an additional 4.5' of Public Utility Easement.
- NMC 15.505.030(H): Modification of Street Right-of-Way Width requires a Type II application to the Planning Director.
 - o a. Unusual topographic conditions require a reduced width or grade separation of improved surfaces; or
 - o b. Lot shape or configuration precludes accessing a proposed development with a street which meets the full standards of this section; or
 - o c. A modification is necessary to preserve trees or other natural features determined by the City to be significant to the aesthetic character of the area; or
 - o d. A planned unit development is proposed and the modification of street standards is necessary to provide greater privacy or aesthetic quality to the development.

Reasons for Request for Variance:

- Federal Relocation Act: Right-of-way acquisition for this project must follow the Federal Uniform Relocation Act, codified by ORS 35.235.
 - o ORS35.235 Agreement for compensation; status of resolution or ordinance of public condemner; status of action of private condemner; agreement effort not prerequisite.
 - (1) Subject to ORS 758.015 and 836.050, whenever in the judgment of the condemner it is necessary to acquire property for a purpose for which the condemner is authorized by law to acquire property, the condemner shall, after first declaring by resolution or ordinance such necessity and the purpose for which it is required, attempt to agree with the owner with respect to the compensation to be paid therefor, and the damages, if any, for the taking thereof.
 - (2) The resolution or ordinance of a public condemner is presumptive evidence of the public necessity of the proposed use, that the property is necessary therefor and that the proposed use, that is the improvements or the project, is planned or located in a manner which will be most compatible with the *greatest public good and the least private injury*.
- If any of these properties were to redevelop in the future, the City would condition them to dedicate the ultimate ½ street ROW.

EXHIBIT A-1



-  1. RIGHT-OF-WAY DEDICATION
1,285 SQ. FT. MORE OR LESS
-  2. PERMANENT UTILITY EASEMENT
404 SQ. FT. MORE OR LESS

ELLIOTT ROAD
N. HWY.99 W. TO NEWBERG HIGH SCHOOL

CES | NW

13190 SW 68th Parkway, Suite 150
Tigard, Oregon 97223
503.968.6655 www.cesnw.com

FILE NUMBER: 07	SUBMITTAL DATE: 9/03/2020
TAX LOT: 06201	REVISED DATE: 9/10/2020
TAX MAP: 3 2 17DB	REVISED DATE:
ADDRESS: 807 ELLIOTT ROAD	

EXHIBIT A-2

File 7_807 Elliott Road
Proposed grading

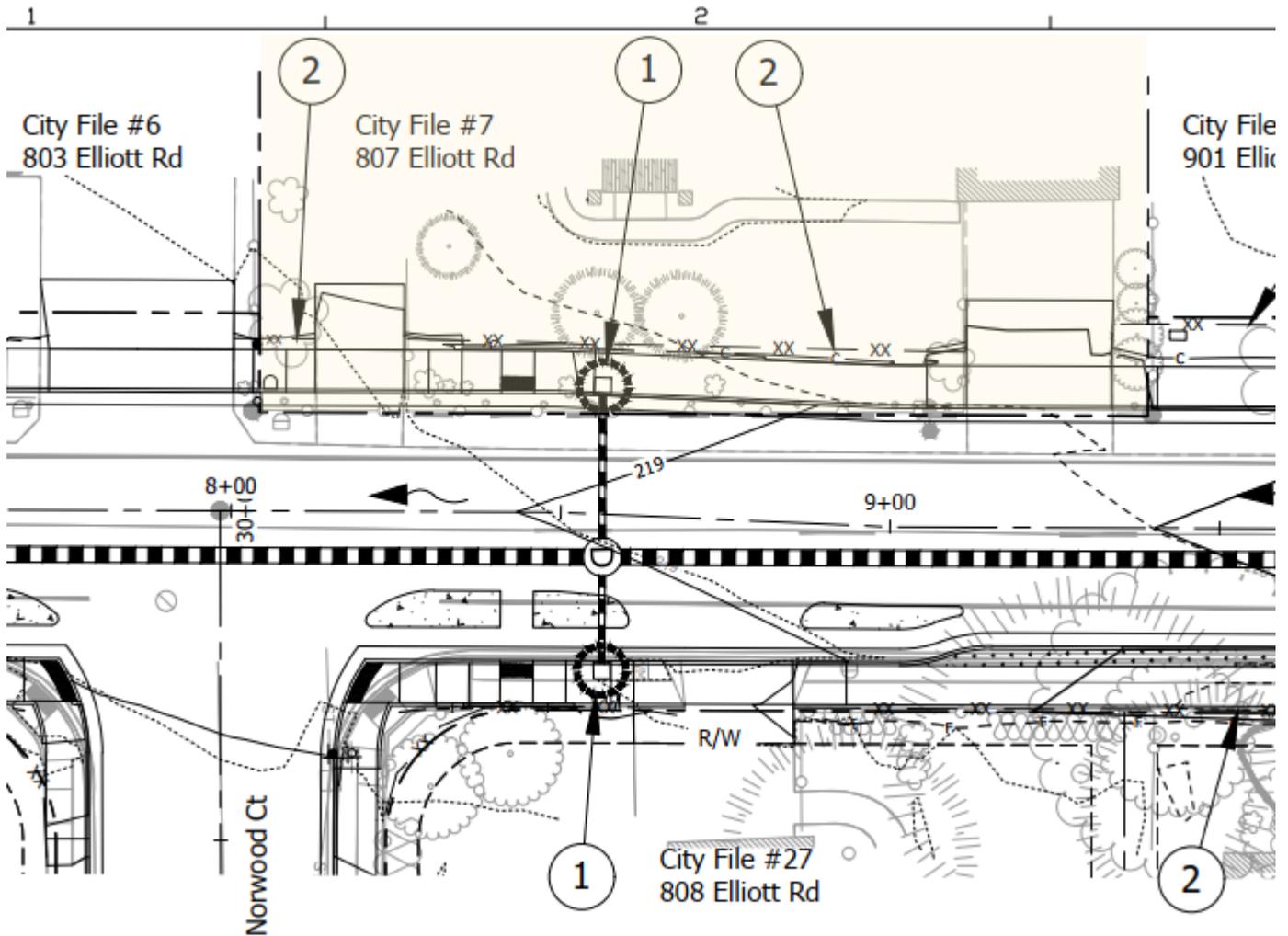
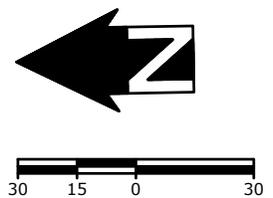
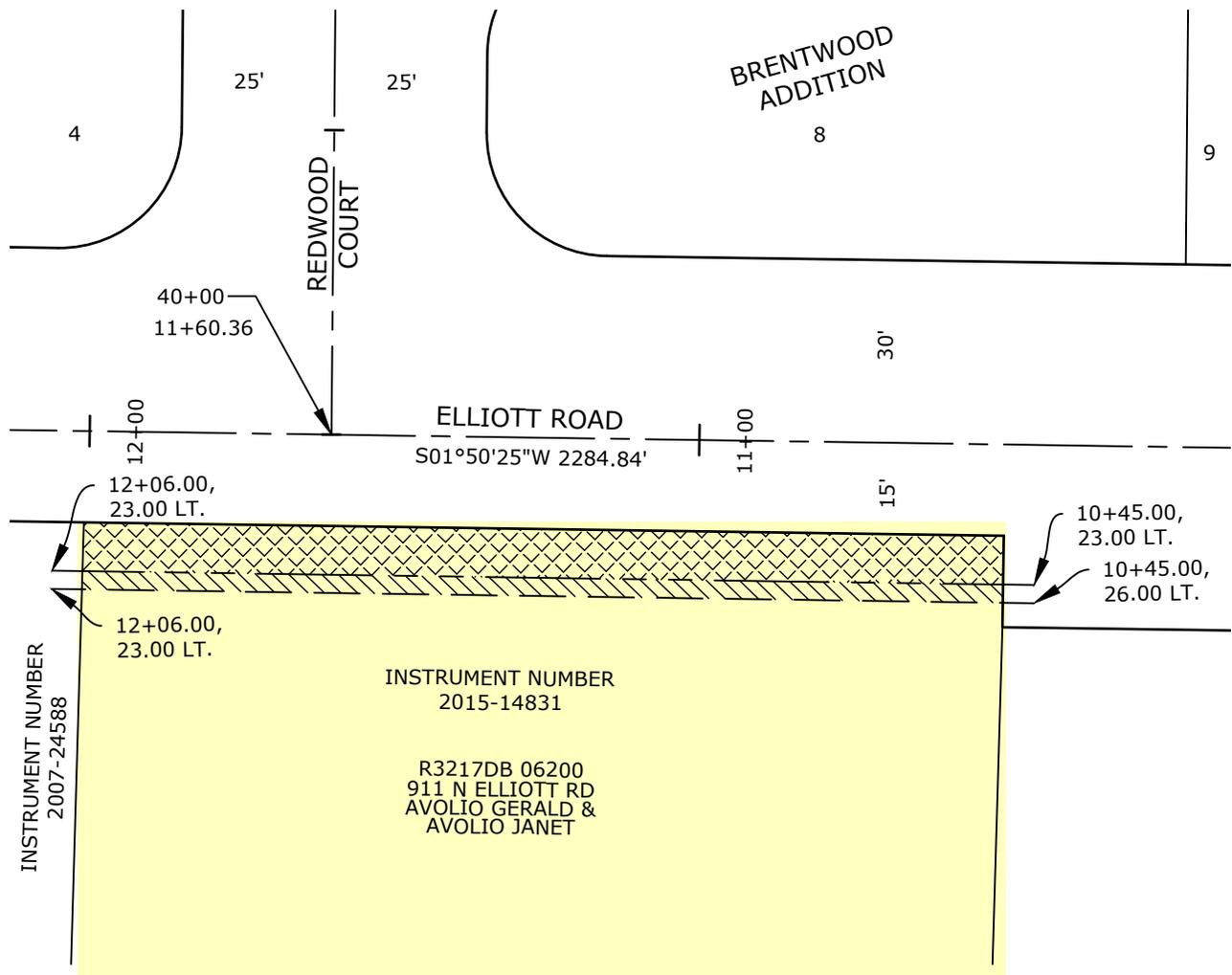


EXHIBIT B-1



-  1. RIGHT-OF-WAY DEDICATION
1,027 SQ. FT. MORE OR LESS
-  2. PERMANENT UTILITY EASEMENT
453 SQ. FT. MORE OR LESS

ELLIOTT ROAD
 N. HWY.99 W. TO NEWBERG HIGH SCHOOL

CES | NW

13190 SW 68th Parkway, Suite 150
 Tigard, Oregon 97223
 503.968.6655 www.cesnw.com

FILE NUMBER: 09	SUBMITTAL DATE: 09/10/2020
TAX LOT: 06200	REVISED DATE:
TAX MAP: 3 2 17DB	REVISED DATE:
ADDRESS: 911 N ELLIOTT ROAD	

EXHIBIT B-2
File 9_911 Elliott Road
Proposed grading

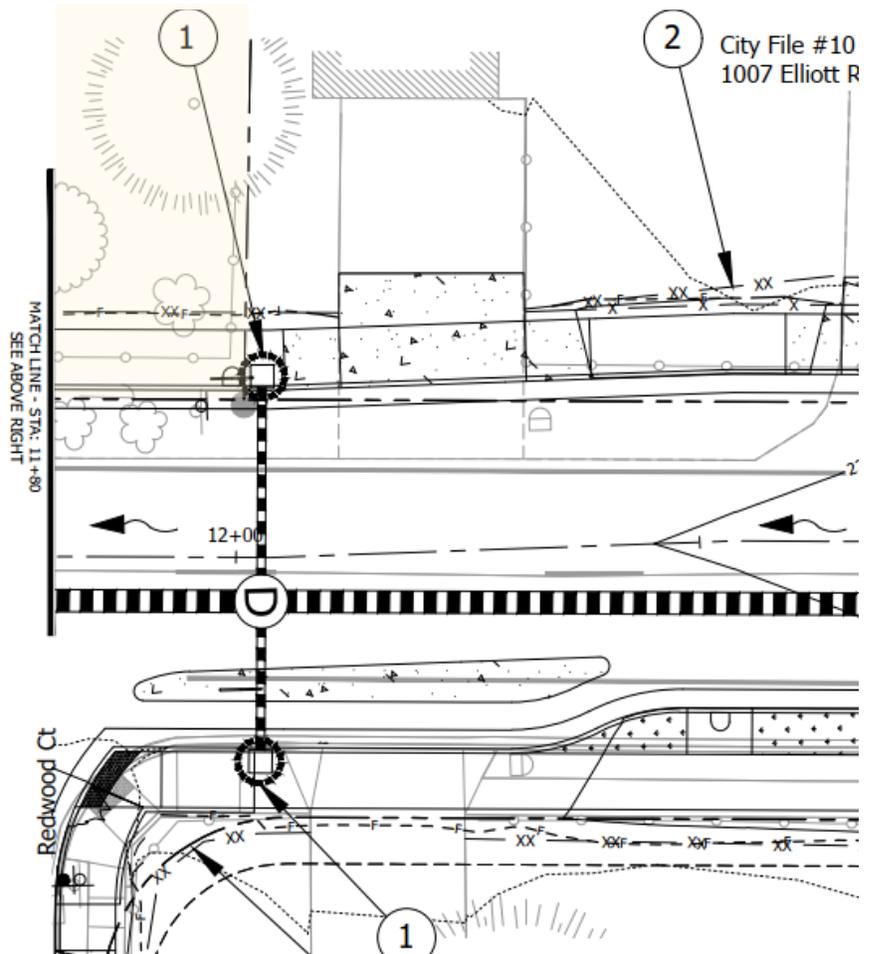
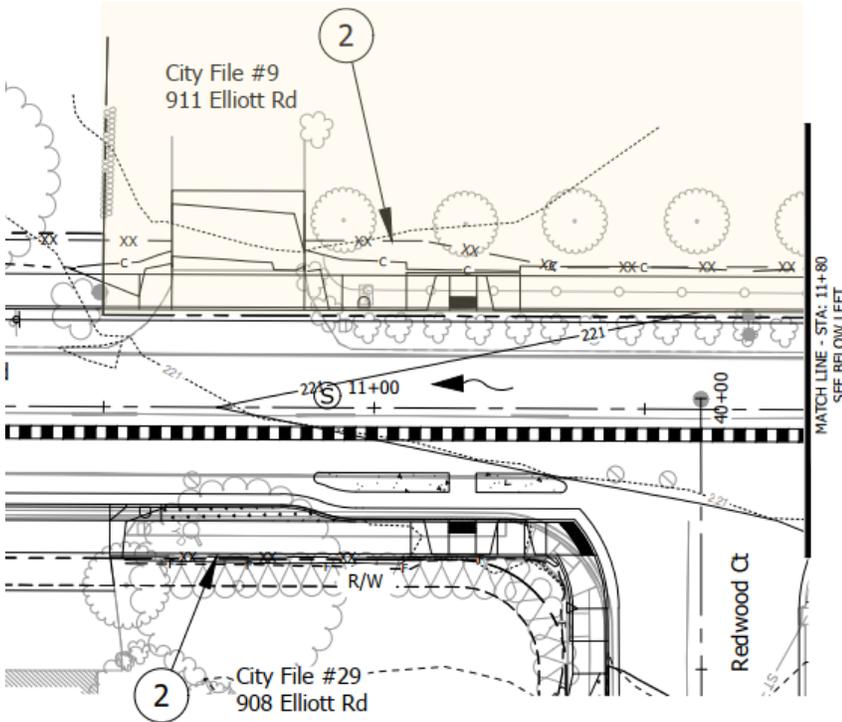
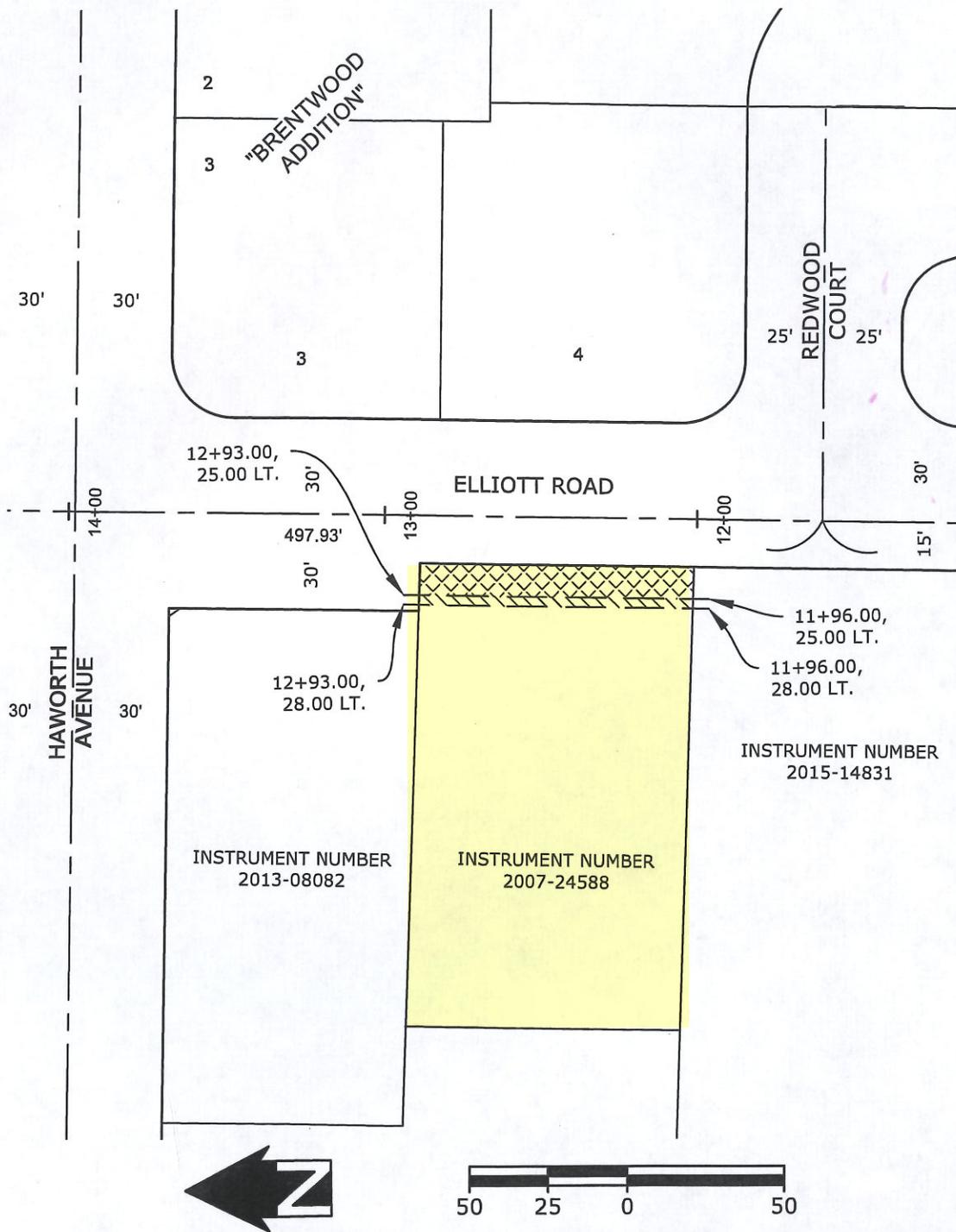


EXHIBIT C-1



-  1. RIGHT-OF-WAY DEDICATION
876 SQ. FT. MORE OR LESS
-  2. PERMANENT UTILITY EASEMENT
262 SQ. FT. MORE OR LESS

ELLIOTT ROAD
N. HWY.99 W. TO NEWBERG HIGH SCHOOL

CES | NW 13190 SW 68th Parkway, Suite 150
Tigard, Oregon 97223
503.968.6655 www.cesnw.com

FILE NUMBER: 10	SUBMITTAL DATE: 7/14/2021
TAX LOT: 06100	REVISED DATE:
TAX MAP: 3 2 17DB	REVISED DATE:
ADDRESS: 1007 N ELLIOTT ROAD	

EXHIBIT C-2

**File 10_1007 Elliott Road
Proposed grading**

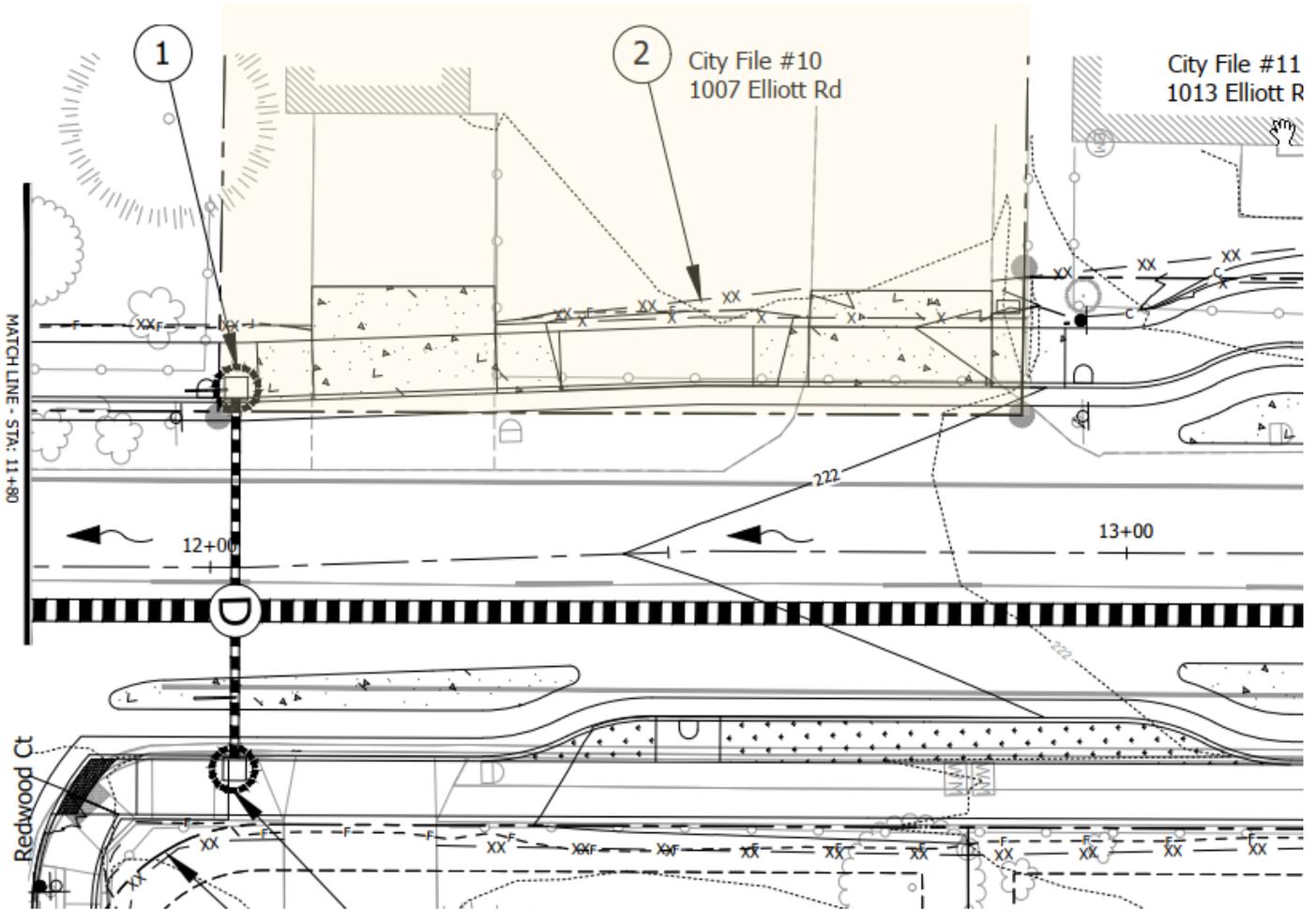


EXHIBIT D-1

R3217DD 02501
704 N ELLIOTT RD 9-12
CEDAR TERRACE LLC

P06-20

2

5+28.00,
29.50 RT.

4+20.42,
29.50 RT.

3+30.91,
31.71 RT.

3+08.00,
33.87 RT.

5+28.00,
25.00 RT.

4+20.36,
25.00 RT.

3+30.64,
27.21 RT.

3+08.00,
29.35 RT.

5+00

ELLIOTT ROAD

S01°50'25"W 2284.84'

4+00

30'



1. RIGHT-OF-WAY DEDICATION
2,258 SQ. FT. MORE OR LESS



2. PERMANENT UTILITY EASEMENT
947 SQ. FT. MORE OR LESS

ELLIOTT ROAD
N. HWY.99 W. TO NEWBERG HIGH SCHOOL

CES | NW

13190 SW 68th Parkway, Suite 150
Tigard, Oregon 97223
503.968.6655 www.cesnw.com

FILE NUMBER: 22

SUBMITTAL DATE: 09/10/2020

TAX LOT: 02501

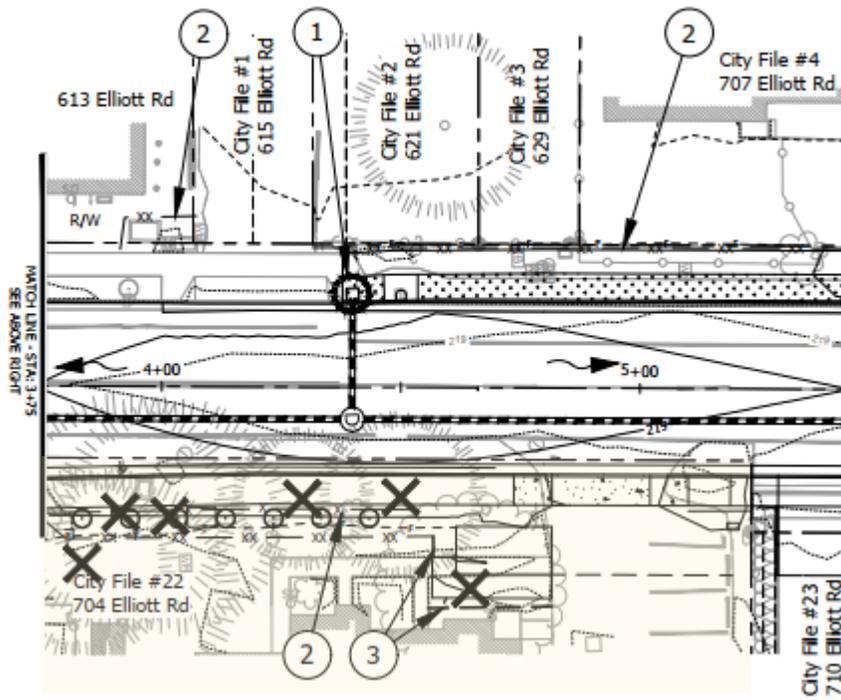
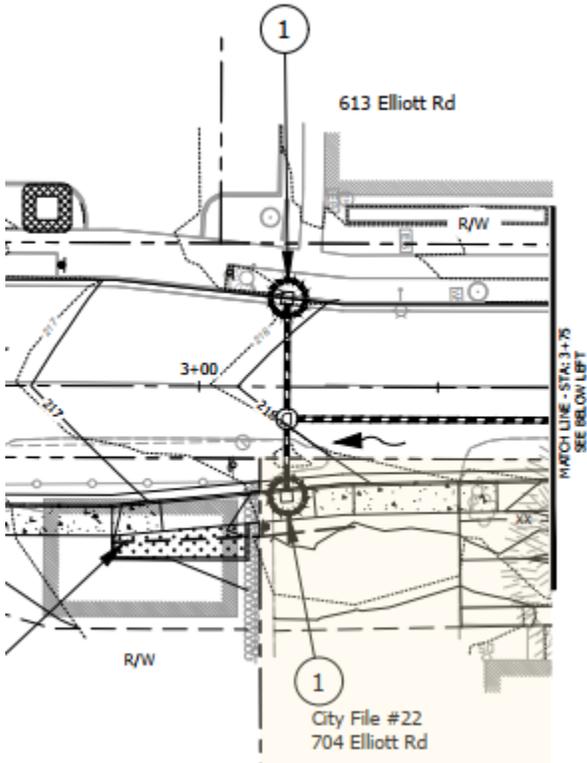
REVISED DATE:

TAX MAP: 3 2 17DD

REVISED DATE:

ADDRESS: 704 N ELLIOTT ROAD

EXHIBIT D-2
File 22_704 Elliott Road
Proposed grading





ELLIOTT ROAD - TYPE II NOTIFICATION LIST

MapTaxlot	SITUS1	SITUSCITY	SITUSZIP	OWNER1	OWNER2	MAILADD1	MAILCITY	MAILSTATE	MAILZIP
R3217DA 00802	1204 N ELLIOTT RD	NEWBERG	97132	SIMPSON ROBERT J	SIMPSON SHARON L	1204 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03600	808 N ELLIOTT RD	NEWBERG	97132	REAB AMANDA	REAB BENJAMIN	808 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00300	707 N ELLIOTT RD	NEWBERG	97132	BLACK GARRY L		707 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 06114	901 N ELLIOTT RD	NEWBERG	97132	HARRIMAN WILLIAM E		901 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03400	908 N ELLIOTT RD	NEWBERG	97132	MITCHELL BRIAN A		1203 SITKA AVE	NEWBERG	OR	97132
R3217DA 00400	2500 HAWTHORNE DR	NEWBERG	97132	J & R EQUITIES		478 17TH ST	SANTA MONICA	CA	90402
R3217DA 00700	1210 N ELLIOTT RD	NEWBERG	97132	SOLORZANO ANTONIO S		1210 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 01600	1205 N ELLIOTT RD	NEWBERG	97132	VAN BERGEN JEFFREY	VAN BERGEN CONTONA S	1205 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 02501	704 N ELLIOTT RD 9-12	NEWBERG	97132	CEDAR TERRACE LLC		13489 NW TREVINO ST	PORTLAND	OR	97229
R3217DA 00803	1202 N ELLIOTT RD	NEWBERG	97132	BYNON DEVIN R &	BYNON REGINA M	1202 ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00200	713 N ELLIOTT RD	NEWBERG	97132	GONZALEZ ANITA		713 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 02602	710 N ELLIOTT RD	NEWBERG	97132	LUCKY DOG PROPERTIES LLC		5250 ROGUE RIVER HWY	GRANTS PASS	OR	97527
R3217DB 06002	1013 N ELLIOTT RD	NEWBERG	97132	KOCH MICHAEL		19490 S FERGUSON TERRACE	OREGON CITY	OR	97045
R3217DA 00900	2505 HAWORTH AVE	NEWBERG	97132	CHURCH OF CHRIST		2503 HAWORTH AVE	NEWBERG	OR	97132
R3217DA 00300	1300 N ELLIOTT RD	NEWBERG	97132	J & R EQUITIES		478 17TH ST	SANTA MONICA	CA	90402
R3217DB 01500	1207 N ELLIOTT RD	NEWBERG	97132	SPENCER THOMAS K	SPENCER WANDA C	1207 ELLIOTT RD	NEWBERG	OR	97132
R3217DA 00801	1206 N ELLIOTT RD	NEWBERG	97132	WOOLEN NORMAN A	WOOLEN STEFFANIE	1705 GEMINI LN	NEWBERG	OR	97132
R3217DB 06201	807 N ELLIOTT RD	NEWBERG	97132	D'HONDT DANIEL L		807 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00500	609 N ELLIOTT RD	NEWBERG	97132	CFT NV DEVELOPMENTS LLC		1683 WALNUT GROVE AVE	ROSEMEAD	CA	91770
R3217DD 02900	2500 HAWORTH AVE	NEWBERG	97132	BROWN TYLER	PAUL KASIE	2500 HAWORTH AVE	NEWBERG	OR	97132
R3217DB 06001	1007 N ELLIOTT RD	NEWBERG	97132	PARKS JON H	PARKS GRACE L	20032 SORRENTO PL	BEND	OR	97702
R3217DC 00402	613 N ELLIOTT RD UNIT 101	NEWBERG	97132	KCK PARTNERS LLC		11483 SE AMITY-DAYTON HWY	DAYTON	OR	97114
R3217DB 05908	2409 HAWORTH AVE	NEWBERG	97132	BROWN MARCIA S TRUSTEE	BROWN MARCIA TRUST	2409 HAWORTH AVE	NEWBERG	OR	97132
R3217DD 04000	2500 NORWOOD CT	NEWBERG	97132	RINGSETH JAMES A	RINGSETH KATIE L	2500 NORWOOD CT	NEWBERG	OR	97132
R3217DB 01700	1203 N ELLIOTT RD	NEWBERG	97132	MULCAHY SHAUN P	MULCAHY KARRIE M	1203 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03000	1004 N ELLIOTT RD	NEWBERG	97132	ANDERSON NICHOLAS	ANDERSON STACY	1004 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 03900	2408 WILLOW DR	NEWBERG	97132	WOOLDRIDGE ELMER & BRENDA L		2408 WILLOW DR	NEWBERG	OR	97132
R3217DD 02502	2501 NE PORTLAND RD B	NEWBERG	97132	VEATCH ROGER A & CAROL E TRUSTEES FOR	VEATCH FAMILY TRUST	18450 NE HILLSIDE DR	NEWBERG	OR	97132
R3217DC 00303	621 N ELLIOTT RD E	NEWBERG	97132	ELLIOTT ESTATES LLC		17370 SW 108TH PL	TUALATIN	OR	97062
R3217DC 00400	615 N ELLIOTT RD	NEWBERG	97132	ELLIOTT ESTATES LLC		17370 SW 108TH PL	TUALATIN	OR	97062
R3217DB 06200	911 N ELLIOTT RD	NEWBERG	97132	AVOLIO GERALD &	AVOLIO JANET	911 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03500	900 N ELLIOTT RD	NEWBERG	97132	CHILD KATHLEEN		PO BOX 396	NEWBERG	OR	97132
R3217DD 02600	720 N ELLIOTT RD	NEWBERG	97132	SHUCKEROW PATRICK C	SHUCKEROW KATHERINE M	PO BOX 253	NEWBERG	OR	97132
R3217DD 02601	714 N ELLIOTT RD	NEWBERG	97132	THOMPSON EMILY		710 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00301	629 N ELLIOTT RD	NEWBERG	97132	ELLIOTT ESTATES LLC		17370 SW 108TH PL	TUALATIN	OR	97062
R3217DB 01800	2409 WILLOW DR	NEWBERG	97132	REDWINE GARY D &	REDWINE CHERI	2409 WILLOW DR	NEWBERG	OR	97132
R3217DB 01400	1209 N ELLIOTT RD	NEWBERG	97132	KWIESELEWICZ NATHALIE		1209 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00100	803 N ELLIOTT RD	NEWBERG	97132	CROCKETT WESLEY	CROCKETT BRANDY	803 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 00100	2409 HAWTHORNE DR	NEWBERG	97132	MARSHALL THOMAS L & TERESA		2409 HAWTHORNE DR	NEWBERG	OR	97132

R3217DA 00802
SIMPSON ROBERT J
1204 N ELLIOTT RD
NEWBERG, OR 97132

R3217DB 06114
HARRIMAN WILLIAM E
901 N ELLIOTT RD
NEWBERG, OR 97132

R3217DA 00700
SOLORZANO ANTONIO S
1210 N ELLIOTT RD
NEWBERG, OR 97132

R3217DA 00803
BYNON DEVIN R &
1202 ELLIOTT RD
NEWBERG, OR 97132

R3217DB 06002
KOCH MICHAEL
19490 S FERGUSON TERRACE
OREGON CITY, OR 97045

R3217DB 01500
SPENCER THOMAS K
1207 ELLIOTT RD
NEWBERG, OR 97132

R3217DC 00500
CFT NV DEVELOPMENTS LLC
1683 WALNUT GROVE AVE
ROSEMEAD, CA 91770

R3217DC 00402
KCK PARTNERS LLC
11483 SE AMITY-DAYTON HWY
DAYTON, OR 97114

R3217DB 01700
MULCAHY SHAUN P
1203 N ELLIOTT RD
NEWBERG, OR 97132

R3217DD 02502
VEATCH ROGER A & CAROL E
18450 NE HILLSIDE DR
NEWBERG, OR 97132

R3217DD 03600
REAB AMANDA
808 N ELLIOTT RD
NEWBERG, OR 97132

R3217DD 03400
MITCHELL BRIAN A
1203 SITKA AVE
NEWBERG, OR 97132

R3217DB 01600
VAN BERGEN JEFFREY
1205 N ELLIOTT RD
NEWBERG, OR 97132

R3217DC 00200
GONZALEZ ANITA
713 N ELLIOTT RD
NEWBERG, OR 97132

R3217DA 00900
CHURCH OF CHRIST
2503 HAWORTH AVE
NEWBERG, OR 97132

R3217DA 00801
WOOLEN NORMAN A
1705 GEMINI LN
NEWBERG, OR 97132

R3217DD 02900
BROWN TYLER
2500 HAWORTH AVE
NEWBERG, OR 97132

R3217DB 05908
BROWN MARCIA S TRUSTEE
2409 HAWORTH AVE
NEWBERG, OR 97132

R3217DD 03000
ANDERSON NICHOLAS
1004 N ELLIOTT RD
NEWBERG, OR 97132

R3217DC 00303
ELLIOTT ESTATES LLC
17370 SW 108TH PL
TUALATIN, OR 97062

R3217DC 00300
BLACK GARRY L
707 N ELLIOTT RD
NEWBERG, OR 97132

R3217DA 00400
J & R EQUITIES
478 17TH ST
SANTA MONICA, CA 90402

R3217DD 02501
CEDAR TERRACE LLC
13489 NW TREVINO ST
PORTLAND, OR 97229

R3217DD 02602
LUCKY DOG PROPERTIES LLC
5250 ROGUE RIVER HWY
GRANTS PASS, OR 97527

R3217DA 00300
J & R EQUITIES
478 17TH ST
SANTA MONICA, CA 90402

R3217DB 06201
D'HONDT DANIEL L
807 N ELLIOTT RD
NEWBERG, OR 97132

R3217DB 06001
PARKS JON H
20032 SORRENTO PL
BEND, OR 97702

R3217DD 04000
RINGSETH JAMES A
2500 NORWOOD CT
NEWBERG, OR 97132

R3217DB 03900
WOOLDRIDGE ELMER & BRENDA L
2408 WILLOW DR
NEWBERG, OR 97132

R3217DC 00400
ELLIOTT ESTATES LLC
17370 SW 108TH PL
TUALATIN, OR 97062

R3217DB 06200
AVOLIO GERALD &
911 N ELLIOTT RD
NEWBERG, OR 97132

R3217DD 02601
THOMPSON EMILY
710 N ELLIOTT RD
NEWBERG, OR 97132

R3217DB 01400
KWIESELEWICZ NATHALIE
1209 N ELLIOTT RD
NEWBERG, OR 97132

R3217DD 03500
CHILD KATHLEEN
PO BOX 396
NEWBERG, OR 97132

R3217DC 00301
ELLIOTT ESTATES LLC
17370 SW 108TH PL
TUALATIN, OR 97062

R3217DC 00100
CROCKETT WESLEY
803 N ELLIOTT RD
NEWBERG, OR 97132

R3217DD 02600
SHUCKEROW PATRICK C
PO BOX 253
NEWBERG, OR 97132

R3217DB 01800
REDWINE GARY D &
2409 WILLOW DR
NEWBERG, OR 97132

R3217DB 00100
MARSHALL THOMAS L & TERESA
2409 HAWTHORNE DR
NEWBERG, OR 97132

November 8, 2021

Doug Rux
Community Development
City of Newberg
PO Box 970
Newberg, OR 97132

Re: MISC221-0002 – Elliott Road

Dear Mr. Rux:

This letter is a response to your notice dated November 2, 2021, in particular the narrative response for Newberg Municipal Code 15.505.030(H):

Properties 807 N Elliott Road and 911 N Elliott Road requires modification of street right-of-way width because of the necessity to preserve existing trees and to minimize impact to the green features of the Elliott Road corridor according to subsection (H)(1)(c).

Property 1007 N Elliott Road requires transition of the narrower street right-of-way to full width to the north as a result of preserving existing trees to the south according to subsection (H)(1)(c).

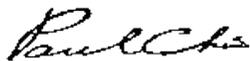
Please refer to Exhibits E-1, E-2 and E3 for the reasons due to the tree impact.

Property 704 N Elliott Road requires a 6-inch narrower street right-of-way from the 60-foot full width at the north corner of the existing multi-dwelling development to preserve the loss of an existing parking space and to minimize impact to the existing lot configuration according to subsection (H)(1)(b). The south portion of this lot does not have a right-of-way issue.

Please also note that the City Council authorized Resolution No. 2020-3681 on June 15, 2020 that they selected “The Buffered Bike Lane” design as the preferred alternative. This alternative specifically directed project staff to proceed with the narrower right-of-way design in some areas of the Elliott Road corridor.

With this additional information, please review this Type II application. Please also advise me when to mail the Neighborhood Notice. If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Chiu".

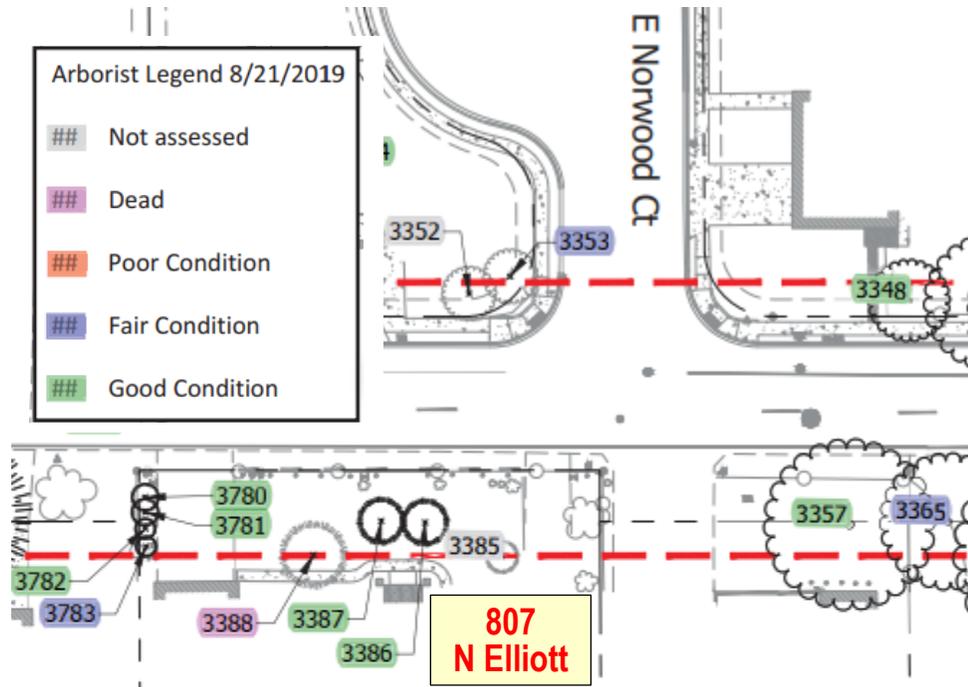
Paul Chiu, PE
Project Manager

Attachments as noted above

EXHIBIT E-1

Date of Response to CDD Notice (via email): 11/8/2021

RE: 807 N Elliott
Tree Survey (8-21-19)



No.	Location	Type	Common Name	Species Name	DBH ¹	C-Rad ²	Cond ³	Comments	Treatment
3385	Priv Prop	Con						Not assessed - below 6" diameter	
3386	Priv Prop	Con	palm	<i>Arecaceae</i> spp.	*9	8	G		
3387	Priv Prop	Con	palm	<i>Arecaceae</i> spp.	*9	8	G		
3388	Priv Prop	Con	spruce	<i>Picea</i> spp.	*23	0	D	Completely dead	
3780	Priv Prop	Dec	apple	<i>Malus</i> spp.	6	5	G	Diameter measured at lower trunk below codominant stem juncture	
3781	Priv Prop	Dec	apple	<i>Malus</i> spp.	7	6	G	Diameter measured at lower trunk below codominant stem juncture	
3782	Priv Prop	Dec	apple	<i>Malus</i> spp.	8	6	G	Diameter measured at lower trunk below codominant stem juncture	
3783	Priv Prop	Dec	apple	<i>Malus</i> spp.	6	4	F	Diameter measured at lower trunk below codominant stem juncture	

¹DBH is tree diameter at breast height measured 4.5-feet above ground level in inches; codominant stems originating below 4.5-feet are separated by a common or indicated as quantity x size. Where noted, diameter was measured below 4.5-feet. *Asterisk indicates limited visual tree assessment due to access limitations on private properties; size was visually estimated and observations were limited to public rights of way only.

²C-Rad is the average crown radius measured in feet.

³Cond is an arborist assigned rating to generally describe the condition of individual trees as follows-

- D: Dead
- P: Poor Condition
- F: Fair Condition

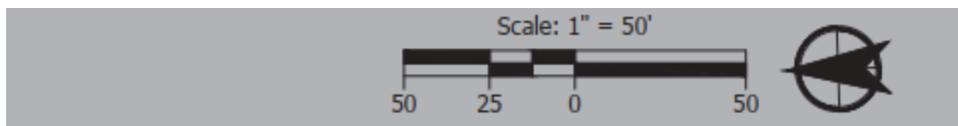
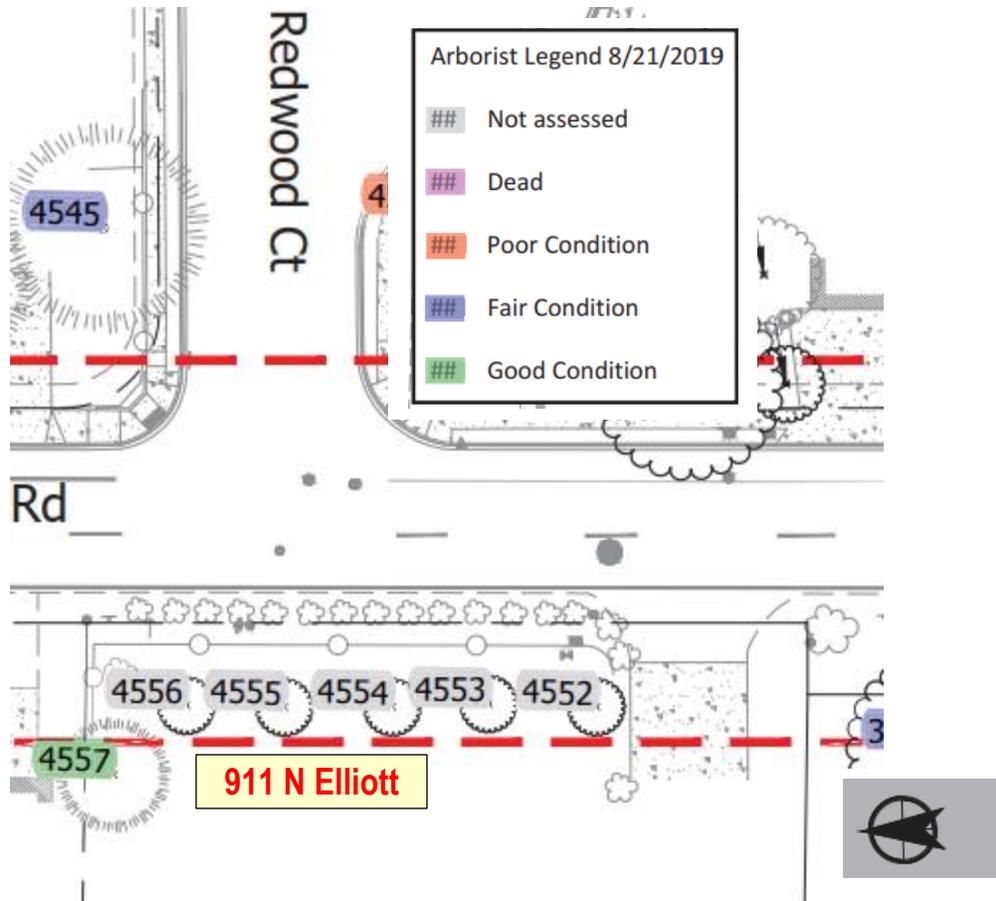


EXHIBIT E-2

Date of Response to CDD Notice (via email): 11/8/2021

RE: 911 N Elliott
Tree Survey (8-21-19)



No.	Location	Type	Common Name	Species Name	DBH ¹	C-Rad ²	Cond ³	Comments	Treatment
4552	Priv Prop	Dec						Not assessed - below 6" diameter	
4553	Priv Prop	Dec						Not assessed - below 6" diameter	
4554	Priv Prop	Dec						Not assessed - below 6" diameter	
4555	Priv Prop	Dec						Not assessed - below 6" diameter	
4556	Priv Prop	Dec						Not assessed - below 6" diameter	
4557	Priv Prop	Con	blue spruce	<i>Picea pungens</i>	*11	14	G	Long live crown	

¹DBH is tree diameter at breast height measured 4.5-feet above ground level in inches; codominant stems originating below 4.5-feet are separated by a common or indicated as quantity x size. Where noted, diameter was measured below 4.5-feet. *Asterisk indicates limited visual tree assessment due to access limitations on private properties; size was visually estimated and observations were limited to public rights of way only.

²C-Rad is the average crown radius measured in feet.

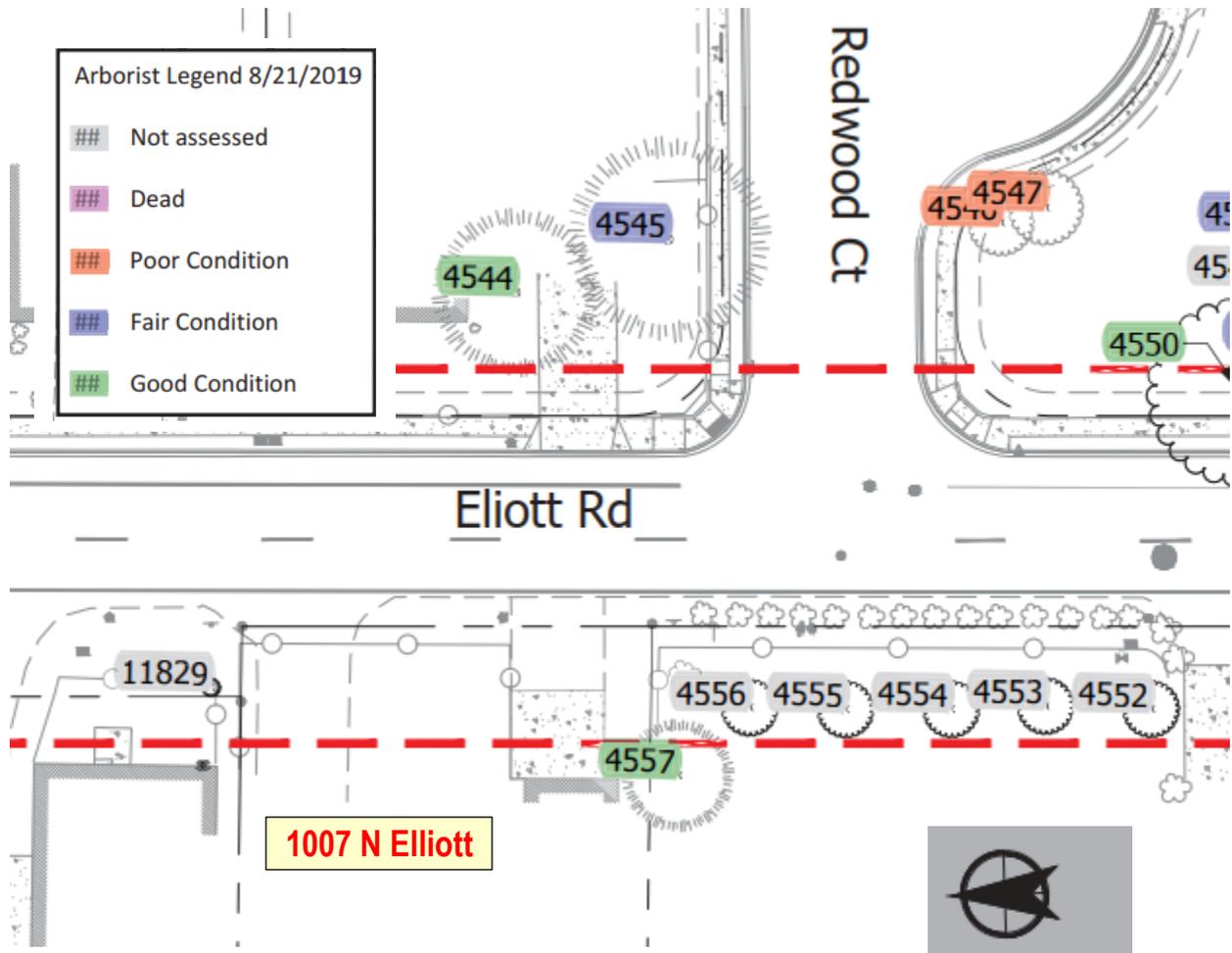
³Cond is an arborist assigned rating to generally describe the condition of individual trees as follows-

- D: Dead
- P: Poor Condition
- F: Fair Condition
- G: Good Condition

EXHIBIT E-3

Date of Response to CDD Notice (via email): 11/8/2021

RE: 1007 N Elliott
Neighboring Tree Survey (8-21-19)



No.	Location	Type	Common Name	Species Name	DBH ¹	C-Rad ²	Cond ³	Comments	Treatment
4557	Priv Prop	Con	blue spruce	<i>Picea pungens</i>	*11	14	G	Long live crown	
11829	ROW	Con						Not assessed - below 6" diameter	

¹DBH is tree diameter at breast height measured 4.5-feet above ground level in inches; codominant stems originating below 4.5-feet are separated by a common or indicated as quantity. Where noted, diameter was measured below 4.5-feet. *Asterisk indicates limited visual tree assessment due to access limitations on private properties; size was visually estimated and observations were limited to public rights of way only.

²C-Rad is the average crown radius measured in feet.

³Cond is an arborist assigned rating to generally describe the condition of individual trees as follows-

- D: Dead
- P: Poor Condition
- F: Fair Condition
- G: Good Condition

Attachment 2: Public Comments

Find messages, documents, photos or people



Home

Compose

To Mr. Paul CHIU

CC / BCC

19

Elliott Rd. Project Comments

Good morning Mr. Chiu:

Thank you for the opportunity to submit comments on the proposed Elliott Road Project. My comments follow:

1) I am surprised at the extensive work planned, which I understand will cost in excess of \$3,000,000 to dress a road to a high school parking lot.

2) I very much do understand and support the need for sidewalks on both sides of Elliott Road for the safety and convenience of pedestrians. As you know this would require the City acquiring part of my front yard.

3) Every week I walk many miles of Newberg City streets. Many streets here have sidewalks on only one side of the street. Many streets do not have sidewalks on either side. I also have noticed many, many sidewalks in the city are in bad need of extensive repair work. May I suggest, if only sidewalks were installed on Elliott Rd. any excess funds could/should be used installing new and repairing old sidewalks in the City.

4) I was told by one of your staff that the Elliott Rd. Project requires widening the road because widening the road will help reduce the speed of traffic. I believe permanent speed cameras would immediately solve the speed problem at a much reduced cost.

Bst Rgds

RECEIVED

NOV 22 2021

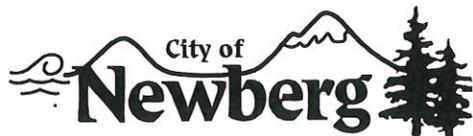
Initial: _____

Send



Good morning Mr Chiu:
I sent comments per your
Request by e mail as
detailed in this cc.
Thank you for the opportunity
to submit comments on the
Elliott Rd. Project
Bst Rgds
Gerry Avolio
Gerry Avolio

CITY OF NEWBERG TYPE II
MAILED NOTICE



Community Development Department

P.O. Box 970 • 414 E First Street • Newberg, Oregon 97132
503-537-1240. Fax 503-537-1272 www.newbergoregon.gov

**WE WANT YOUR COMMENTS ON A PROPOSED NEW
DEVELOPMENT IN YOUR NEIGHBORHOOD**

The Elliott Road project manager submitted an application to the City of Newberg for Type II Determination. See below for details. You are invited to take part in the City's review of this project by sending in your written comments. The applicable criteria used to make a decision on this application are found in Newberg Development Code 15.505.030(H). For more details about giving comments, please see the back of this sheet.

The development would include right of way improvements for the N Elliott Road corridor from Highway 99W north to Newberg High School. Proposed improvements include pavement, curb and gutter, sidewalk, ADA ramps, bicycle lanes, storm drainage, wastewater pipeline, water main, street lighting, conversion from aerial to underground power line, traffic calming and roadway safety features, and landscape enhancement.

- APPLICANT: *Paul Chiu (Elliott Road Project Manager)*
- TELEPHONE: *(503) 554-1751*
- PROPERTY OWNER: *City of Newberg (Elliott Road right-of-way)*
- LOCATION: *Elliott Road from Hwy 99W to Newberg High School*
- TAX LOT NUMBER: *Yamhill County TL 3217DB-06201, TL 3217DB-06200, TL 3217DB-06100, and TL 3217DD-02501 (Elliott Road residential)*



Site map with project location (N Elliott Road) highlighted as shown above (arrows pointing to properties for Type II determination)

From:
Miguel Gonzales
713 N Elliott Road
Newberg, OR 97132

November 30, 2021

RECEIVED

DEC - 1 2021

To:
City of Newberg
Community Development Department
PO Box 970
Newberg, OR 97132

Initial: _____

Subject: City Of Newberg File No. MISC221-0002 Type II Application -Land Use

I, Miguel Gonzales, do NOT approve of the subject Type II application.

It is fundamental, and a part of land use law and the city's own code that the Owner must approve of the application, even approve of and sign the land use application.

The City does NOT meet the provisions of NMC 15.505.030(h) because you have failed to have the owners sign the land use application.

Below is the relevant code and key case examples below in **Yellow**

Additionally, and

of equal or GREATER IMPORTANCE the city has made no serious effort to address the many concerns and suggestions of Elliott Road residents including those presented at the Newberg City Council Meeting on 3/15/2016.



Miguel Gonzales

CC: Attorney - Tyler Smith

Via US Mail (1st class) and hand delivered

Via email (courtesy of Daniel DHondt) to all City Council members

15.100.030 Type II procedure.

- A. Type II development actions shall be decided by the [director](#).
- B. Type II actions include, but are not limited to:
1. Site design review.
 2. [Variances](#).
 3. [Manufactured dwelling parks](#) and [mobile home parks](#).
 4. [Partitions](#).
 5. Subdivisions, except for subdivisions with certain conditions requiring them to be processed using the Type III process, pursuant to NMC [15.235.030\(A\)](#).
- C. The [applicant](#) shall provide notice pursuant to the requirements of NMC [15.100.200](#) et seq.
- D. The [director](#) shall make a decision based on the information presented and shall issue a [development permit](#) if the [applicant](#) has complied with all of the relevant requirements of this [code](#). The [director](#) may add conditions to the permit to ensure compliance with all requirements of this [code](#).
- E. Appeals may be made by an affected party, Type II, in accordance with NMC [15.100.160](#) et seq. All Type II development action appeals shall be heard and decided by the [planning commission](#).
- F. If the [director](#)'s decision is appealed as provided in subsection (E) of this section, the [hearing](#) shall be conducted pursuant to the Type III [quasi-judicial hearing](#) procedures as identified in NMC [15.100.050](#).
- G. The decision of the [planning commission](#) on any appeal may be further appealed to the [city council](#) by an affected party, Type III, in accordance with NMC [15.100.160](#) et seq. and shall be a review of the record supplemented by written or oral arguments relevant to the record presented by the parties.
- H. An [applicant](#) shall have the option to request at the time the [development permit](#) application is submitted that the proposal be reviewed under the Type III procedure. [Ord. [2813](#) § 1 (Exh. A § 3), 9-5-17; Ord. [2747](#) § 1 (Exh. A § 4), 9-6-11; Ord. [2451](#), 12-2-96. Code 2001 § 151.022.]

15.100.090 Development permit application.

Applications for [development permits](#) shall be submitted upon forms established by the [director](#). An application shall consist of all materials required by this [code](#), including the following information:

- A. A completed [development permit](#) application form.
- B. Proof that the property affected by the application is in the exclusive ownership of the [applicant](#), or that the [applicant](#) has the consent of all [owners](#) of the affected property.
- C. Other information required by this [code](#).
- D. The applicable fees. [Ord. [2451](#), 12-2-96. Code 2001 § 151.040.]

Relevant Cases:

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. A local government does not err in failing to require an easement holder to sign or authorize the landowner's permit application, where the code requires only the "owner" to sign and the code defines "owner" to refer only to the owner of record, not easement holders. *Kane v. City of Beaverton*, 56 Or LUBA 240 (2008).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Any error in a hearings officer's conclusion that the terms of an easement allow a public utility to file a land use application without the property owner's signature is harmless, where the code allows a public utility with condemnation authority to sign land use applications, and there is no dispute that the applicant is a public utility with condemnation powers under applicable statutes. *Cyrus v. Deschutes County*, 46 Or LUBA 703 (2004)

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where the applicant is a general partnership, a code requirement that the application bear the signature of the applicant is satisfied if the record indicates the person who signed the application is a general partner. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994)

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where a local code provision requires the consent of all property owners affected by a land use application, a present owner must sign the application, notwithstanding an agreement obligating the present owner to convey the property in the future to a party who signed the application. *Johnston v. City of Albany*, 34 Or LUBA 32 (1998)

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. A county errs in deferring the requirement to obtain the signatures of all property owners to a subsequent administrative proceeding, in which staff are granted the discretion to determine whether the county signature

requirement is preempted or rendered invalid under federal law. Citizens Against LNG v. Coos County, 63 Or LUBA 162 (2011).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. A county errs in deferring a county code requirement to obtain the signatures of all property owners to a subsequent administrative proceeding that does not provide notice or opportunity for public input, in which staff is granted the discretion to determine whether a circuit court order condemning an easement or less-than-fee interest in property “obviates” the need to obtain the signature of the fee owner. Citizens Against LNG v. Coos County, 63 Or LUBA 162 (2011).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where the purpose of a zoning code requirement that a permit application be initiated in one of six specified ways is to ensure that the current property owner or purchaser of the affected property knows about and agrees with the application, and the record establishes that the current property owner agrees with the application, the county’s procedural error in allowing the permit application to be initiated in other than one of the six ways specified in the zoning code could not prejudice a permit opponent’s rights and provides no basis for reversal or remand. Womble v. Wasco County, 54 Or LUBA 68 (2007).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where the county code requires the signature of all owners of the property, and to ensure compliance with respect to a proposed pipeline crossing multiple properties the county imposes a condition requiring that the approval becomes effective only when the utility provider supplies all required signatures, an ambiguity in the condition regarding whether all signatures of all property owners are required for the approval to become effective is not a basis to remand the decision, where it is reasonably clear from the condition and findings that the county intended that all signatures of all owners be obtained before the approval becomes effective and Page 2 of 11 building permits for any part of the pipeline can be obtained. Citizens Against LNG v. Coos County, 63 Or LUBA 162 (2011).

25.2 Local Government Procedures – Authority to Act. A county has authority or jurisdiction to deny a permit application on its merits, where the permit applicant fails to demonstrate he was authorized to submit the permit application but the code limitations on who can submit permit applications do not impose a “jurisdictional” requirement. Base Enterprises, Inc. v. Clackamas County, 38 Or LUBA 614 (2000).

25.2 Local Government Procedures – Authority to Act. The absence of relevant or even essential information in an application does not preclude consideration by the city, although it may result in a denial of the application. Sullivan v. City of Woodburn, 31 Or LUBA 192 (1996).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A provision in a local subarea plan allowing submittal of master plan application without the consent of all owners of property subject to the application does not violate ORS 227.175(1). Lowery v. City of Keizer, 48 Or LUBA 568 (2005)

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where intervenors filed a conditional use permit application as an agent of the property owner, there is no violation of the provision in ORS 215.416(1) stating that an owner of property may apply for a permit. Silani v. Klamath County, 22 Or LUBA 735 (1992)

12/01/2021

Elliott Road Development Resident Comment

File No MISC221-0002

Dear City Council & Paul Chiu,

As a landowner along Elliott Rd, I am writing to state that I am in opposition to the bike lanes included in the Elliott Road Improvement Project.

I continue to be opposed to adding bike lanes on Elliott Road by way of taking homeowners property. Here are my reasons why:

1. The number of people that will actually use bike lanes on this road is low. We have low bike traffic in all of Newberg and extremely low bike traffic on this road.
2. A big reason City Council wants bike lanes is for the students locally commuting to school, particularly for Newberg High School Students. However, the number of bikes on the bike racks at this school are low.
3. Most bikers don't use bike lanes anyways and will either ride with traffic on the street if they are a regular/confident biker or the less confident bikers (children) will use sidewalks. As a mother, I know, even with bike lanes I would still ask my kids to ride on the sidewalk which is safer for children.
4. The 10 year plan of taking street parking from Haworth and Deborah to make connecting bike lanes from Elliott Rd. is incredibly faulty. Both Haworth and Deborah have a significant number of cars parked on the street every single day, especially in front of Multi-Family Housing Complexes. The reality is, these complexes need that overflow parking and to take it away for rarely used bike lanes is going to negatively impact these families.

Simply stated, I do not agree that the number of possible bikers that might use the bike lanes on Elliott Rd. will outweigh the impact this proposed road expansion will have on the property owners of Elliott Rd. or the impact bike lanes will have on the residents of Haworth and Deborah in the coming years.

Sincerely,
Brandy Crockett
803 N Elliott Rd
Newberg OR 97132

RECEIVED

DEC - 1 2021

Initial: _____

James A Talt
 201 Crestview Dr
 Newberg, OR 97132
 (503) 554 5461

November 29, 2021 Page 1/3

City of Newberg
 Community Development Department
 PO Box 970
 Newberg, OR 97132

RECEIVED

DEC - 1 2021

Initial: _____

Subject: Elliott Road Improvement

Reference: City Of Newberg File No. MISC221-0002 Type II Application -Land Use

Attention Newberg City and City Council Members,

This letter documents requested modifications to the Type II Land Use Application described in the referenced file. The proposed modifications herein will achieve the cities goals of sidewalks, curbs, gutters, ADA compliance, improved lighting and safety on Elliott Road while also preserving the home environments of the Elliott Rd citizenry and their needed on-street parking. The proposals save annex compensation money and also provide immediate inexpensive improvements to current bike routes to the Newberg school and sport complexes located on Deborah Road.

Proposed Modifications

- A) **'Fast track' the completion of bike lanes on Deborah Rd from 99W to Haworth and designate both sides as No Parking. (See photo 1)** This will immediately improve bike access and safety to the Newberg schools and sport complexes and reduces a need for bike lanes on Elliott Rd. There are no residences on that portion of Deborah Rd and the business have ample *on-site* parking so there is no demand for *on-street* parking. Newberg's Transportation Safety Plan (TSP) currently lists Deborah Rd as both a Critical Bicycle Route and a Minor Collector (ref TSP pages 26 & 37) and it does not yet have its bike lanes! The TSP refers to this as a **Bike Lane Gap** (ref TSP page 29)
- B) **Reclassify Elliott Rd from a Major Collector to a Local Residential street. Add needed road improvements for Safety, Accessibility, ADA, Drainage, etc. and with on-street parking and Shared Lane Markings for bikes from Haworth south to 99W.** This will preserve the approx. 25 on-street parking spots in daily use by residents that will otherwise be lost in the current plan (Where are

they to park?). The TSP repeatedly states that high priority be given to providing on-street residential parking availability (ref TSP page 47).

- C) Omit Planter Strips.** The city plan removes Green Space from the yards of residents to create Green Spaces in planter strips. Leave the Green Space with the residents where, daresay, it will be better maintained. Also, Elliott Rd south of 99W does not have planter strips so this proposal results in a street design consistent with existing Elliott Rd segments (see photo 2).
- D) Add road improvements per (B) above and create bike lanes from Haworth north to the High School. Designate no street parking on this one block stretch.** The proposed changes will provide safe access for bikes traveling south to Haworth from the Hawthorne and Willow neighborhoods and from there East to the schools, or the Aquatic Center to the West. There is currently no parking on either side of that portion of Elliott because of drainage ditches and no residences front onto Elliott.

Though the TSP designates N. Elliot Rd a Major Collector (TSP page 37), it is a **Major Collector in name only**. It is only two blocks long and has only 3 intersecting streets. The adjacent neighborhoods south of Haworth have their own residential street access to 99W and do not use Elliott Rd. 90% of Haworth traffic continues East-West on Haworth to Villa or Springbrook. This is also true of the high school drivers who are only in attendance 180 days per year. Traffic on Elliott is low and so is the speed limit. Additionally, the portion of Elliott Rd from Haworth to 99W fails the various setback requirements for a Major Collector (TSP page 40). Overall, it is much easier to envision Elliott Rd as a Residential Street than a Major Collector.



Photo 1: Deborah Road leading from 99W towards Newberg Schools and sports complexes. Classified as a Minor Collector. Needs dedicated bike lanes. Has no need of on-street parking. Note that it does not have planter strips.



**Photo 2: Elliott Road south of 99W.
No planter strips.**

Conclusion

The reference city plan will totally change the yard and home environments of the N. Elliott Road residents and does NOT address their repeatedly expressed concerns for on-street parking (ref Council Mtg 3/15/21).

City Planning has made no serious effort to address these issues directly face-to-face with Elliott residents.

Proposed herein are workable alternatives to Newberg's Type II Land Use request. They represent one of several different solutions that could be explored if only the City Council will vote to reopen the Elliott Road project and not allow Newberg City to **steamroll Elliott residents** using outside consultants that produce fancy videos and claim that they have produced a net gain in parking (ref Council Mtg 3/15/21).

Please vote NO on the cities Type II application and then vote to revisit the whole plan and make this a model for how the many future city projects should be developed thereby proving that we are truly Better Together.

Regards,

Jim Talt

Tyler Smith

From: Tyler Smith
Sent: Wednesday, December 1, 2021 9:55 AM
To: Paul Chiu; Doug Rux
Cc: Tyler Smith; Dan Dhondt
Subject: Comments, objections and legal arguments about File No. MISC221-0002

(Via US Mail and e-mail)
 City of Newberg
 Community Development
 PO Box 970
 Newberg Oregon 97132

RECEIVED

DEC - 6 2021

Initial: _____

File No. MISC221-0002 (Elliot Road Variance Request)

Dear Community Development Director, Newberg City Council and Staff:

I write to you today to note a few legal reasons why your proposed Application must be denied. As you are aware our law firm represents Mr. Daniel Dhondt and Cedar Terrace, LLC in relation to their property rights.

- 1) Newberg Municipal Code requires the Owner of the real property in question to approve of the application or be the applicant. Rajiv Jain and Cedar Terrace, LLC as well as Dan Dhondt, own 704 N Elliot Rd, and 807 N Elliot Rd respectively. They are not the applicant, nor do they approve of land use actions covering their property.
- 2) Your application does not meet any of the criteria of NMC 15.505.030(h)

There are other options, such as downgrading the street category of Elliot Rd., delaying this action, and reducing the impacts and condemnations of the owners' property that are preferred. While we appreciate this attempt to minimize the taking of private property for public use, nonetheless we oppose your attempts to condemn and take my client's private property for your preferred use and plan. My clients and other interested community members have suggested alternatives, and alternate plans.

This application was just discovered by my clients so this is a rushed response. However points 1 and 2 above are elaborated as follows:

1) Newberg Municipal Code 15.100.090 (b) bars this application from being approved.

NMC 15.100.090 requires that land use application provide PROOF that the property affected by the application is in the exclusive ownership of the applicant, or otherwise have the consent of all owners of the property.

- a. Newberg does not have the consent of my clients Daniel Dhondt, nor Rajiv Jain who is the managing member of Cedar Terrace LLC. The property that they own as fee simple title owners is included as a part of your application. See Exhibit A-1 of your application packet shows the portion owned by Mr. Dhondt, and See Exhibit D-1 of your application, which shows the portion owned by Cedar Terrace LLC. Thus Mr. Chiu (the Applicant) nor the City of Newberg is the

“exclusive owner” of the property, nor does the Applicant have the consent of these two owners. The application must therefore be denied under the NMC. Oregon law is clear on this point. Where a local code provision requires the consent of all property owners affected by a land use application, a present owner must sign the application. *Johnston v. City of Albany*, 34 Or LUBA 32 (1998).

- b. Furthermore, the application page itself, shows that no-owner has signed the application. Mr. Chiu apparently signed for the applicant on October 20, 2021 but he is neither the owner nor the owner’s agent.

2) Newberg Municipal Code 15.505.030(h) is not met here.

NMC 15.505.030 is cited as the basis for this variance. Modification of Street Right-of-Way and Improvement Width. The director, pursuant to the Type II review procedures of Chapter 15.220 NMC, may allow modification to the public street standards of subsection (G) of this section, when the criteria in both subsections (H)(1) and (2) of this section are satisfied:

“ The modification is necessary to provide design flexibility in instances where:

- a. Unusual topographic conditions require a reduced width or grade separation of improved surfaces; or
- b. Lot shape or configuration precludes accessing a proposed development with a street which meets the full standards of this section; or
- c. A modification is necessary to preserve trees or other natural features determined by the city to be significant to the aesthetic character of the area; or
- d. A planned unit development is proposed and the modification of street standards is necessary to provide greater privacy or aesthetic quality to the development.”

Each of those four possible alternatives is not met

(a) Here, there is no unusual topographic condition, the City is simply proposing to widening the street against the wishes of these owners. Proposing to enter onto these owners lots, take their property for public use and establish wider easements and rights of way over Cedar Terrace.

(b) The lot shape and configuration is not affective access at all since the access will exist either way and these properties are already street frontage properties.

(c) There have not yet been any findings nor assertions about which trees are being determined to be significant, but the opponents agree there are some important and significant trees that should not be disturbed by the proposed plan.

(d) No planned unit development is proposed.

CONCLUSION

This application cannot be approved because the owners of at least some of the the property in question are not the applicant, and have not consented to this application. This violates the NMC and Oregon law.

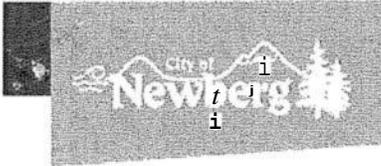
 Tyler Smith | Owner and Founding Attorney
 Tyler Smith & Associates P.C.
 503-266-5590 (work) | 503-266-5594 (work)
 503-212-6392 (fax)

tyler@ruralbusinessattorneys.com

Our Law Firm: <http://www.RuralBusinessAttorneys.com>

The information contained in this e-mail is confidential and may also be attorney-client privileged. This information is intended only for the use of the individual or entity to whom it is addressed. If you have received this communication and are not the intended recipient, please delete this message and contact our office immediately.

Attachment 1: Appeal Application



APPEAL APPLICATION 2021

FILE # MISC221-0002

TYPE - PLEASE CHECK ONE:

- Appeal of a Type I Decision (i.e. Design Review for a Duplex, Sign, or Single Family Residence)
- Appeal of a Type II Decision (i.e. Variance, or Design Review, Subdivision)
- Appeal of a Type III Decision (i.e. Conditional Use Permit)
- Appeal of Peddler, Solicitor, or Temporary Merchant
- Other (explain): _____

APPLICANT INFORMATION:

APPLICANT: Paul Chiu - Appellant and Property owner is Dan Dhondt

ADDRESS: Appellant's Address is 807 N Elliot Rd

PHONE: 503-266-5590 MOBILE: _____ FAX: _____

CO-APPLICANT (if applicable): _____ PHONE _____

ADDRESS: _____

GENERAL INFORMATION:

PROJECT NAME: N Elliot Road

FILE NUMBER OF PROJECT BEING APPEALED: MISC221-0002

PROJECT LOCATION: N Elliot Rd

PROJECT DESCRIPTION / USE: Residential/Street

BRIEFLY DESCRIBE THE REASON FOR YOUR APPEAL:

This determination is a Type II application. See decision Section I (C). Type II applications for development permits require all of the materials required by the Newberg Code 15.100.090.

NMC 15.100.090 requires proof that the property affected is in the exclusive ownership of the applicant, or the applicant has the consent of all owners. NMC 15.100.090. The City has not provided proof that it owns Mr. Dhondt's property at 807 N Elliot Rd. The City does not have the consent of Mr. Dhondt. Therefore the application does not contain proof that satisfies NMC 15.100.090(B). That is a violation of NMC and of the case law in Johnston v. City of Albany, 34 OR LUBA 32 (1998)

SPECIFIC APPEAL REQUIREMENTS ARE ATTACHED

General Checklist: Fees Notice Information Written Response Supporting Appeal.

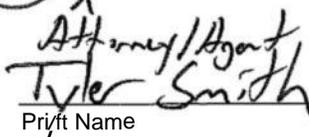
THE ABOVE STATEMENTS AND INFORMATION HEREIN CONTAINED ARE IN ALL RESPECTS TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I AFFIRM THAT I WAS PARTY TO THE INITIAL PROCEEDINGS.

Applicant Signature _____ Date _____


Owner Signature


DUKX

Print Name _____


Print Name



Community Development

January 14, 2022

Mr. Paul Chiu
City of Newberg
414 E First Street
Newberg, OTR 97132

Parties Providing Comments: Gerry Avoilo, Miguel Gonzales, Brandy Crockett, James Talt, Tyler Smith

Dear Mr. Chiu,

The Newberg Community Development Director has provided a determination based on your application MISC221-0002 Elliott Road Improvement Project. The decision will become effective on January 28, 2022, unless an appeal is filed.

You may appeal this decision to the Newberg Planning Commission within 14 calendar days of this decision in accordance with Newberg Development Code 15.100.170. All appeals must be in writing on a form provided by the Planning Division. Anyone wishing to appeal must submit the written appeal form together with the required fee of \$550.20 to the Planning Division within 14 days of the date of this decision.

The deadline for filing an appeal is 4:30 pm on January 27, 2022

If you have any questions, please contact me at doug.rux@newbergoregon.gov or 503-537-1212.
Sincerely,

Doug Rux, AICP
Community Development Director

Attachment

Tyler Smith

From: Tyler Smith
Sent: Wednesday, December 1, 2021 9:55 AM
To: Paul Chiu; Doug Rux
Cc: Tyler Smith; Dan Dhondt
Subject: Comments, objections and legal arguments about File No. MISC221-0002

(Via US Mail and e-mail)
 City of Newberg
 Community Development
 PO Box 970
 Newberg Oregon 97132

RECEIVED
 Off. - 6 2021
 Initial: _____

File No. MISC221-0002 (Elliot Road Variance Request)

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I write to you today to note a few legal reasons why your proposed Application must be denied. As you are aware our law firm represents Mr. Daniel Dhondt and Cedar Terrace, LLC in relation to their property rights.

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"exclusive owner" of the property, nor does the Applicant have the consent of these two owners. The application must therefore be denied under the NMC. Oregon law is clear on this point. Where a local code provision requires the consent of all property owners affected by a land use application, a present owner must sign the application. *Johnston v. City of Albany*, 34 Or LUBA 32 (1998).

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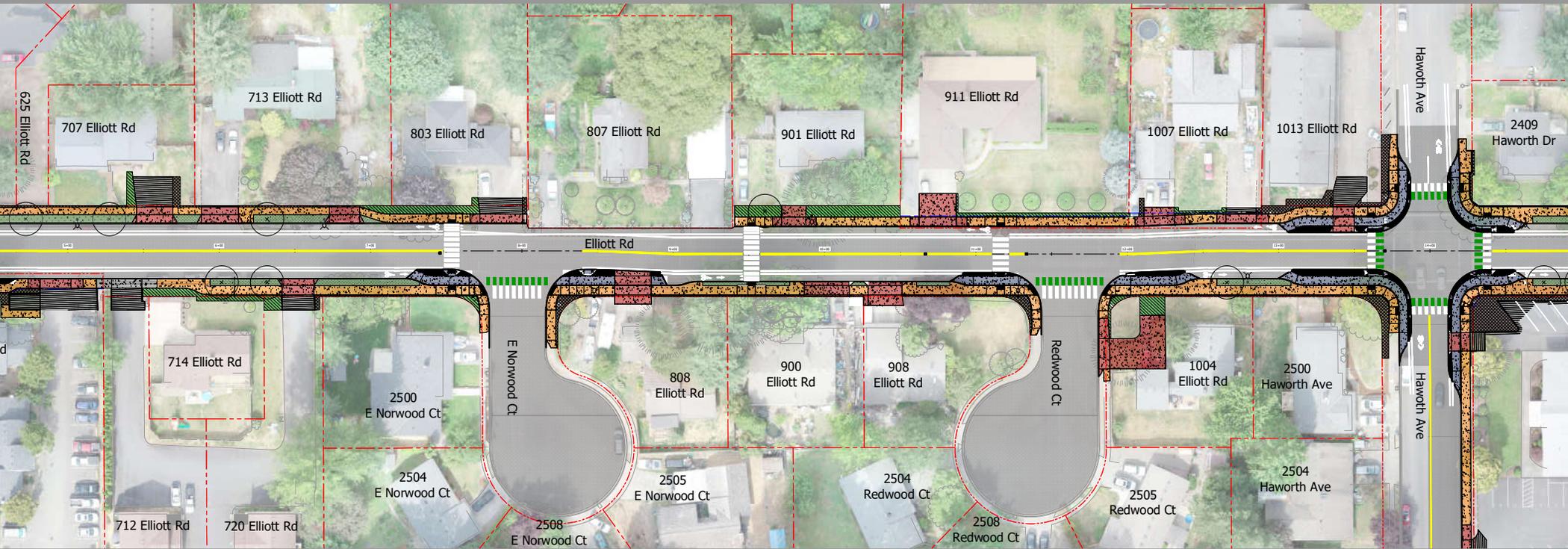
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CONCLUSION

This application cannot be approved because the owners of at least some of the the property in question are not the applicant, and have not consented to this application. This violates the NMC and Oregon law.

 Tyler Smith | Owner and Founding Attorney
 Tyler Smith & Associates P.C.
 503-266-5590 (work) | 503-266-5594 (work)
 503-212-6392 (fax)

Attachment 2: Graphic Illustrating the Design Modification



Attachment 3: January 14, 2022, Community Development Director Decision



Community Development

January 14, 2022

Mr. Paul Chiu
City of Newberg
414 E First Street
Newberg, OR 97132

Parties Providing Comments: Gerry Avoilo, Miguel Gonzales, Brandy Crockett, James Talt, Tyler Smith

Dear Mr. Chiu,

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The deadline for filing an appeal is 4:30 pm on January 27, 2022

If you have any questions, please contact me at doug.rux@newbergoregon.gov or 503-537-1212.

Sincerely,

A handwritten signature in blue ink, which appears to read "Doug Rux", is enclosed in a thin black rectangular box.

Doug Rux, AICP
Community Development Director

Attachment

STAFF REPORT Determination – N Elliott Road – MISC221-0002

FILE NO: MISC221-0002

REQUEST: Reduce the right-of-way width design for four properties for improvements to N Elliott Road

LOCATION: N Elliott Road (Highway 99W to Newberg High School)

TAX LOT(S): The lots impacted by a reduced ROW width include R3217DB 06201, R3217DB 06200, R3217DB 06001, R3217DD 02501

APPLICANT: Paul Chiu, City of Newberg

OWNER: N/A

ZONE: Low Density Residential District (R-1), High Density Residential (R-3)

PLAN DISTRICT: LDR (Low Density Residential), HDR (High Density Residential)

CONTENTS

Section I: Application Information
Section II: Exhibit A Findings

Attachments:

1. Application
2. Public Comments

Section I: Application Information

A. DESCRIPTION OF APPLICATION:

The development would include right of way improvements for the N Elliott Road corridor from Highway 99W to Newberg High School. Proposed improvements include pavement, curb and gutter, sidewalk, ADA ramps, bicycle lanes, storm drainage, wastewater pipeline, water main, street lighting, conversion from aerial to underground power lines, traffic calming and roadway safety features, and landscape enhancement. Along the length of the roadway improvement the roadway would be narrowed below the 28.5' for a ½ street width improvement in front of four (4) parcels.

NMC 15.505.030(G) Street Width & Design Standards for Major Collector is 36' curb-to-curb (2-12' travel lanes, 2-6' bike lanes), 2-5' planter strips, 2-5' sidewalks → Total 56' of physical improvements. Typical sections show an additional 0.5' behind sidewalk to ROW. This gives a minimum ROW width of 57' as noted in NMC, or 28.5' for a ½ Street width.

The Elliott Road Improvement Project is minimizing Right-of-way acquisition along the corridor resulting in four (4) parcels requiring less than the minimum right-of-way per NMC.

- File 7 – 807 N Elliott Road: Varies from 25.5' to 23.5' of Right-of-way with an additional 3' of Public Utility Easement.
- File 9 – 911 N Elliott Road: 23' of ROW with an additional 3' of Public Utility Easement.
- File 10 – 1007 N Elliott Road: 25' of ROW with an additional 3' of Public Utility Easement.
- File 22 – 704 N Elliott Road: Varies from 25' to 29' of Right-of-way with an additional 4.5' of Public Utility Easement.

B. SITE INFORMATION:

1. Location: N Elliott Road corridor from Highway 99W north to Newberg High School
2. Size: Not applicable
3. Topography: Flat
4. Current Land Uses:
807 N Elliott Road – Single Family Residence

911 N Elliott Road – Single Family Residence

1007 N Elliott Road – Multi-family Residential

704 N Elliott Road – Single Family Residence

5. Natural Features: There are trees, shrubs, and grass yard along the N Elliott Road corridor.

6. Adjacent Land Uses:

807 N Elliott Road

- a. North: Single-family Residential
- b. East: Single-family Residential
- c. South: Single-family Residential
- d. West: Single-family Residential

911 N Elliott Road

- a. North: Multi-family Residential and Single-family Residential
- b. East: Single-family Residential
- c. South: Single-family Residential
- d. West: Single-family Residential

1007 Elliott Road

- a. North: Multi-family Residential
- b. East: Single-family Residential
- c. South: Single-family Residential
- d. West: Single-family Residential

704 N Elliott Road

- a. North: Single-family Residential
- b. East: Commercial
- c. South: Commercial
- d. West: Commercial, Multi-family and Single-family Residential

7. Zoning: The following zoning districts are adjacent the subject properties for the right-of-way reduction width.

807 N Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

911 N Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

1007 Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

704 N Elliott Road

- a. North: R-2
- b. East: C-2
- c. South: C-2
- d. West: C-2/LU and R-2

8. Access and Transportation: Access to for all parcels along N Elliott Road is to N Elliott Road. The four residential lots where the right-of-way width is proposed to be reduced take access from N Elliott Road.

9. Utilities:

- a. Water: he City’s GIS system shows there is an existing 8-inch water line in N Elliott Road.
- b. Wastewater: The City’s GIS system shows there is an existing 8-inch wastewater line in N Elliott Rad.
- c. Stormwater: The City’s GIS system shows an intermittent stormwater system along the roadway corridor. Some areas have a stormwater system and other areas do not have a stormwater system.
- d. Overhead Lines: There are overhead utilities serving the properties along

N Elliott Road or running parallel to the property frontages. Any new connection to any of the properties including the four properties where the right-of-way is proposed to be narrowed will need to be undergrounded. See NMC 15.430.010 for exception provisions.

- C. PROCESS:** The Determination is a Type II application and follows the procedures in Newberg Development Code 15.100.030. Following a 14-day public comment period, the Community Development Director makes a decision on the application based on the criteria listed in the attached findings. The Director’s decision is final unless appealed.

Important dates related to this application are as follows:

- a. 11/04/2021: The Community Development Director deemed the application complete.
- b. 11/17/2021: The applicant mailed notice to the property owners within 500 feet of the site.
- c. 12/01/2021: The 14-day public comment period ended.
- d. 1/14/2022: The Community Development Director issued a decision on the application.

- D. AGENCY COMMENTS:** The application was routed to several public agencies for review and comment (Attachment 1). Comments and recommendations from city departments have been incorporated into the findings and conditions. As of the writing of this report, the city received the following agency comments:

City Manager: Reviewed, no conflict

Finance: Reviewed, no conflict

Police: Reviewed, no conflict

Public Works Maintenance: Reviewed, no conflict.

Public Works Superintendent: Reviewed, no conflict.

Public Works Director: Reviewed, no conflict

Public Works Wastewater Treatment Plant: Reviewed, no conflict

- E. PUBLIC COMMENTS:**

Public comments (summarized) were received from the following parties and are included in full Attachment 2.

1. Gerry Avoilo: Provided four comments. 1) Surprised by the extent of the work and the cost of over \$3M to dress up a road to the high school. 2) Understands and supports the need for sidewalks on both sides of Elliott Road for safety and convenience of pedestrians. To do so would require a part of his front yard. 3) He walks every week and notes any streets do not have sidewalks on both sides, some street with no sidewalks, some streets with sidewalks on only one side, and many sidewalks are in need of repair. He comments that if the N Elliott Road project was to only install sidewalks that excess funds should be used to repair old sidewalk in the city. 4) He was informed that widening the road was necessary to help reduce traffic speed. He inquired about permeant speed camera installation to reduce the speeding problem.

Staff Response: 1) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not address the criteria of 15.505.030H.1.a.-d. The cost of the project should be addressed directly to the Public Works Engineering Division. 2) Mr. Avoilo's property is one of the properties where the applicant has requested a narrower right-of-way width for the N Elliott Road improvements. The Applicant is working to acquire right-of-way for the improvements which will include a sidewalk. 3) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not address the criteria of 15.505.030H.1.a.-d. This comment will be forwarded to the applicant for consideration in the sign of the N Elliott Road improvement. 4) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not address the criteria of 15.505.030H.1.a.-d. This comment will be forwarded to the applicant for consideration in the sign of the N Elliott Road improvement.

2. Miguel Gonzales: Provided comments in response to the process being utilized. 1) He does approve the Type II application. 2) The owner of the property must approve the application and sign the application. 3) the city does not meet the requirements of 15.505.030(h) because owners did not sign the application. 4) Attached section of the Code he believes are applicable. 5) The city has not made serious efforts to address concerns raised by residents.

Staff Response: NMC 15.505.030H.1.a.-d. and 2 are applicable to the applicant's request. Specifically, "H. Modification of Street Right-of-Way and Improvement Width. The director, pursuant to the Type II review procedures of Chapter 15.220 NMC, may allow modification to the public street standards of subsection (G) of this section, when the criteria in both subsections (H)(1) and (2) of this section are satisfied: ..." The Applicant submitted an application to address a modification to the design for the right-of-way width for the N Elliott Road project to reduce the right-of-way width along the frontage of four properties. As the Road Authority the City of Newberg is designing a future transportation improvement. This design will determine the right-of-way necessary to acquire where insufficient right-of-way exists for a future transportation improvement. The application did not require property owner signature for the Applicant to request a determination if a reduced right-of-way width is feasible to minimize impacts along the transportation corridor. Without the application request by the Applicant the transportation design would have to meet the requirements of NMC 15.505.030 G. Street Width and Design Standards requiring more right-of-way than may be necessary. Any right-of-way acquisition would be negotiated. 2) As noted above the property owner was not required to sign the application as the

Applicant is requesting a determination to reduce the right-of-way width along the frontage of four properties. 3) The Applicant submitted an application to determine if a narrower right-of-way width can be approved following the procedures laid out in NMC 15.505.030H.1.a.-d. and 2. 5) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not respond the criteria of 15.505.030H.1.a.-d. This comment will be forwarded to the applicant for consideration in the design of the N Elliott Road improvement.

3. Brandy Crockett: Provided comments in response to 1) Opposition to bike lanes on N Elliott Road. 2) Point 1 is to the actual number of people that will use the bike lanes. Point 2 is the City Council wants bike lanes for students to commuting to school but the number of bikes in racks at the High School is low. Point 3 is that most bike users don't use bike lanes and ride with traffic or children use the sidewalk. Point 4 is the 10 year plan to take away street parking for bike lanes from Haworth and Deborah to make connecting bike lanes to Elliott Road.

Staff Response: The Applicant's request is for a determination of the necessary right-of-way related to four properties along N Elliott Road. The general comment of opposition to bike lanes and to the 4 points raised do not respond to the requirements of NMC 15.505.030H.1.a.-d. and 2. The comments will be forwarded to the applicant for consideration in the design of the N Elliott Road improvement.

4. James Talt: Mr. Talt provided comments requesting modifications to the Type II Land Use Application based on four requests. A) Fast track the completion of bike lanes on Deborah Road from 99W to Haworth and designate both sides as no parking. B) Reclassify Elliott Road from a Major Collector to a Local Residential Street. Add needed road improvements for safety, accessibility, ADA, drainage, etc. and with no-street parking and shared land markings for bikes from Haworth south to 99W. C) Omit Plater strips. D) Add road improvements per (B) above and create bike lanes from Haworth north to the High School. Designate no street parking on this one block stretch.

Staff Response: The submitted application is specific to a modification to the right-of-way width along N Elliott Road related to four property frontages. The submitted comments do not respond to the criteria of NMC 15.505.030H.1.a.-d. and 2. The comments will be forwarded to the applicant for consideration in the design of the N Elliott Road improvement.

5. Tyler Smith: Mr. Smith provided comments indicating 1) Newberg Municipal Code requires the Owner of the real property in question to approve of the application or be the applicant. Rajiv Jain and Cedar Terrace, LLC as well as Dan Dhondt, own 704 N Elliot Rd, and 807 N Elliot Rd respectively. They are not the applicant, nor do they approve of land use actions covering their property. 2) Your application does not meet any of the criteria of NMC 15.505.030(h)

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right-of-way width is feasible to minimize impacts along the transportation corridor. Without the application request by the Applicant the transportation design would have to meet the requirements of NMC 15.505.030 G. Street Width and Design Standards requiring more right-of-way than may be necessary. Any right-of-way acquisition would be negotiated.

Mr. Smith's comments regarding NMC 15.505.030(h) are addressed below in the findings section of this report.

**Section II: Findings – File MISC221-0002
Determination – N Elliott Road**

15.505.030 Street standards.

H. Modification of Street Right-of-Way and Improvement Width. The director, pursuant to the Type II review procedures of Chapter 15.220 NMC, may allow modification to the public street standards of subsection (G) of this section, when the criteria in both subsections (H)(1) and (2) of this section are satisfied:

1. The modification is necessary to provide design flexibility in instances where:

a. Unusual topographic conditions require a reduced width or grade separation of improved surfaces; or

Finding: Not applicable.

b. Lot shape or configuration precludes accessing a proposed development with a street which meets the full standards of this section; or

Finding: The Applicant indicates the property at 704 N Elliott Road requires a 6-inch narrower street right-of-way from the 60-foot full width at the north corner of the existing multi-dwelling development to preserve the loss of an existing parking spaces and to minimize impact to the existing lot configuration according to subsection (H)(1)(b). The south portion of this lot does not have a right-of-way issue. Three parking spaces would be relocated as part of the roadway improvement to another relocation of the 704 N Elliott Road site as mitigation.

Staff concurs with the applicant because of the effort to minimize the displacement of parking at on the north side of the access point into the development.

c. A modification is necessary to preserve trees or other natural features determined by the City to be significant to the aesthetic character of the area; or

Finding: The applicant indicates the properties at 807 N Elliott Road and 911 N Elliott Road requires modification of street right-of-way width because of the necessity to preserve existing trees and to minimize impact to the green features of the N Elliott Road corridor according to subsection (H)(1)(c). At 807 N Elliott Rod the narrowed right-of-way design would preserve two (2) existing palm trees which are unique to the neighborhood area. At 911 NE Elliott Road the narrowed right-of-way design preserves five (5) deciduous trees which is part of the neighborhood character.

The property at 1007 N Elliott Road requires transition of the narrower street right-of-way to full width to the north as a result of preserving existing trees to the south according to subsection (H)(1)(c).

Staff concurs with the applicant because narrowing the right-of-way design preserve trees and allows for transitions to occur from where the right-of-way is narrowed back to its full width required by NMC 15.505.030 G.

d. A planned unit development is proposed and the modification of street standards is necessary to provide greater privacy or aesthetic quality to the development.

Finding: Not applicable as the proposal is not part of a planned unit development .

2. Modification of the standards of this section shall only be approved if the director finds that the specific design proposed provides adequate vehicular access based on anticipated traffic volumes.

Finding: The narrowed right-of-way design at four (4) locations provides adequate vehicular access based on anticipated traffic volumes for N Elliott Road. The design includes travel lanes, bike lanes, and sidewalk to allow for multi-modal access along the transportation corridor.

***Type II Review Procedures of Chapter 15.220
15.220.020 Site design review applicability.***

A. Applicability of Requirements. Site design review shall be required prior to issuance of building permits or commencement of work for all improvements noted below. Site design review permits shall be processed as either Type I or Type II, as noted below.

2. Type II.

a. Any new development or remodel which is not specifically identified within subsection (A)(1) of this section.

b. Telecommunications facilities.

Finding: The requested determination is not new development or remodel which is not specifically identified within subsection (A)(1) of this section and is not a telecommunications facility. These criteria do not apply.

15.220.030 Site design review requirements.

B. Type II. The following information is required to be submitted with all Type II applications for site design review:

1. Site Development Plan. A site development plan shall be to scale and shall indicate the following as appropriate to the nature of the use:

- a. Access to site from adjacent right-of-way, streets and arterials;*
- b. Parking and circulation areas;*
- c. Location and design of buildings and signs;*
- d. Orientation of windows and doors;*
- e. Entrances and exits;*
- f. Private and shared outdoor recreation spaces;*
- g. Pedestrian circulation;*
- h. Outdoor play areas;*
- i. Service areas for uses such as mail delivery, trash disposal, above-ground utilities, loading and delivery;*
- j. Areas to be landscaped;*
- k. Exterior lighting;*
- l. Special provisions for handicapped persons;*
- m. Other site elements and spaces which will assist in the evaluation of site development;*
- n. Proposed grading, slopes, and proposed drainage;*
- o. Location and access to utilities including hydrant locations; and*
- p. Streets, driveways, and sidewalks.*

2. Site Analysis Diagram. *A site analysis diagram shall be to scale and shall indicate the following characteristics on the site and within 100 feet of the site:*

- a. Relationship of adjacent lands;*
- b. Location of species of trees greater than four inches in diameter at four feet above ground level;*
- c. Existing and proposed topography;*

d. Natural drainage and proposed drainage and grading;

e. Natural features and structures having a visual or other significant relationship with the site.

3. Architectural Drawings. *Architectural drawings shall be prepared which identify floor plans and elevations.*

4. Landscape Plan. *The landscape plan shall indicate:*

a. The size, species and approximate locations of plant materials to be retained or placed on the site together with a statement which indicates the mature size and canopy shape of all plant materials;

b. Proposed site contouring; and

c. A calculation of the percentage of the site to be landscaped.

5. Special Needs for Handicapped. *Where appropriate, the design review plan shall indicate compliance with handicapped accessibility requirements including, but not limited to, the location of handicapped parking spaces, the location of accessible routes from the entrance to the public way, and ramps for wheelchairs.*

6. Existing Features and Natural Landscape. *The plans shall indicate existing landscaping and existing grades. Existing trees or other features intended to be preserved or removed shall be indicated on the plans.*

7. Drives, Parking and Circulation. *Proposed vehicular and pedestrian circulation, parking spaces, parking aisles, and the location and number of access points shall be indicated on the plans. Dimensions shall be provided on the plans for parking aisles, back-up areas, and other items as appropriate.*

8. Drainage. *The direction and location of on- and off-site drainage shall be indicated on the plans. This shall include, but not be limited to, site drainage, parking lot drainage, size and location of storm drain lines, and any retention or detention facilities necessary for the project.*

9. Buffering and Screening. *Buffering and screening of areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures shall be shown on the plans.*

10. Signs and Graphics. *The location, colors, materials, and lighting of all exterior signs, graphics or other informational or directional features shall be shown on the plans.*

11. Exterior Lighting. *Exterior lighting within the design review plan shall be indicated on the plans. The direction of the lighting, size and type of fixtures, and an indication of the amount of lighting shall be shown on the plans.*

12. Trash and Refuse Storage. *All trash or refuse storage areas, along with appropriate screening, shall be indicated on the plans. Refuse storage areas must be constructed of brick, concrete block or other similar products as approved by the director.*

13. Roadways and Utilities. *The proposed plans shall indicate any public improvements that will be constructed as part of the project, including, but not limited to, roadway and utility improvements.*

14. Traffic Study. *A traffic study shall be submitted for any project that generates in excess of 40 trips per p.m. peak hour. This requirement may be waived by the director when a determination is made that a previous traffic study adequately addresses the proposal and/or when off-site and frontage improvements have already been completed which adequately mitigate any traffic impacts and/or the proposed use is not in a location which is adjacent to an intersection which is functioning at a poor level of service. A traffic study may be required by the director for projects below 40 trips per p.m. peak hour where the use is located immediately adjacent to an intersection functioning at a poor level of service. The traffic study shall be conducted according to the City of Newberg design standards.*

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. and is not applicable. The application request is for a determination per NMC 15.505.030H.1.a.-d. and 2 if a narrower right-of-way width can be utilized than required per NMC 15.505.030 G for a minor collector roadway. At 704 N Elliott Road 3 parking spaces will be relocated as litigation to another relocation on the site. At 807 N Elliott Road the reduced right-of-way width would maintain setbacks to the structure of 23-24 feet and to the garage of 24 feet which exceeds the requirements of NMC 15.410.020A1 and 15.410.020A.

15.220.050 Criteria for design review (Type II process).

B. Type II. *The following criteria are required to be met in order to approve a Type II design review request:*

1. Design Compatibility. *The proposed design review request incorporates an architectural design which is compatible with and/or superior to existing or proposed uses and structures in the surrounding area. This shall include, but not be limited to, building architecture, materials, colors, roof design, landscape design, and signage.*

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Design Compatibility is not applicable

because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220.

2. Parking and On-Site Circulation. Parking areas shall meet the requirements of NMC 15.440.010. Parking studies may be required to determine if adequate parking and circulation are provided for uses not specifically identified in NMC 15.440.010. Provisions shall be made to provide efficient and adequate on-site circulation without using the public streets as part of the parking lot circulation pattern. Parking areas shall be designed so that vehicles can efficiently enter and exit the public streets with a minimum impact on the functioning of the public street.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Parking and On-Site Circulation is not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

3. Setbacks and General Requirements. The proposal shall comply with NMC 15.415.010 through 15.415.060 dealing with height restrictions and public access; and NMC 15.405.010 through 15.405.040 and 15.410.010 through 15.410.070 dealing with setbacks, coverage, vision clearance, and yard requirements.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Setbacks and General Requirements is not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

4. Landscaping Requirements. The proposal shall comply with NMC 15.420.010 dealing with landscape requirements and landscape screening.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Landscaping Requirements is not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

5. Signs. Signs shall comply with NMC 15.435.010 et seq. dealing with signs.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Signs are not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to

reduce the right-of-way width at selected locations.

6. Manufactured Dwelling, Mobile Home and RV Parks. Manufactured dwelling and mobile home parks shall also comply with the standards listed in NMC 15.445.075 through 15.445.100 in addition to the other clear and objective criteria listed in this section. RV parks also shall comply with NMC 15.445.170 in addition to the other criteria listed in this section.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Manufactured Dwelling, Mobile Home and RV Parks are not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

7. Zoning District Compliance. The proposed use shall be listed as a permitted or conditionally permitted use in the zoning district in which it is located as found in NMC 15.305.010 through 15.336.020. Through this site review process, the director may make a determination that a use is determined to be similar to those listed in the applicable zoning district, if it is not already specifically listed. In this case, the director shall make a finding that the use shall not have any different or more detrimental effects upon the adjoining neighborhood area than those specifically listed.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Transportation facilities and improvements are a permitted use per 15.305.010. The N Elliott Road transportation corridor is in the C-2 (Community Commercial), R-1 (Low Density Residential), R-2 (Medium Density Residential) and R-3 (High Density Residential) zones.

8. Subdistrict Compliance. Properties located within subdistricts shall comply with the provisions of those subdistricts located in NMC 15.340.010 through 15.348.060.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. The N Elliott Road transportation corridor is in the Airport Overlay (Airport Transition Surface and Airport Inner Horizontal Surface). The northern portion of N Elliott Road is in the Marijuana Exclusion area.

9. Alternative Circulation, Roadway Frontage Improvements and Utility Improvements. Where applicable, new developments shall provide for access for vehicles and pedestrians to adjacent properties which are currently developed or will be developed in the future. This may be accomplished through the provision of local public streets or private access and utility easements. At the time of development of a parcel, provisions shall be made to develop the adjacent street frontage in accordance with city street standards and the standards contained in the transportation plan. At the

discretion of the city, these improvements may be deferred through use of a deferred improvement agreement or other form of security.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. No new developments are proposed by the application request. N Elliott Road does provide access to existing commercial and residential development along the transportation corridor. No development of a parcel is proposed.

10. Traffic Study Improvements. If a traffic study is required, improvements identified in the traffic study shall be implemented as required by the director.

Finding: The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. No traffic study was required or prepared for the design of improvements to N Elliott Road.

CONCLUSION:

The proposed determination request to narrow the right-of-way cross-section at four locations along the N Elliott Road corridor satisfies the approval and is approved.

Attachment 1: Application Material



TYPE II APPLICATION – LAND USE

File #: _____

TYPES – PLEASE CHECK ONE:

- | | |
|---|---|
| <input type="checkbox"/> Design review | <input type="checkbox"/> Type II Major Modification |
| <input type="checkbox"/> Tentative Plan for Partition | <input type="checkbox"/> Variance _____ |
| <input type="checkbox"/> Tentative Plan for Subdivision | <input type="checkbox"/> Other: (Explain) _____ |

APPLICANT INFORMATION:

APPLICANT: _____
 ADDRESS: _____
 EMAIL ADDRESS: _____
 PHONE: _____ MOBILE: _____ FAX: _____
 OWNER (if different from above): _____ PHONE: _____
 ADDRESS: _____
 ENGINEER/SURVEYOR: _____ PHONE: _____
 ADDRESS: _____

GENERAL INFORMATION:

PROJECT NAME: _____ PROJECT LOCATION: _____
 PROJECT DESCRIPTION/USE: _____ PROJECT VALUATION: _____
 MAP/TAX LOT NO. (i.e.3200AB-400): _____ ZONE: _____ SITE SIZE: _____ SQ. FT. ACRE
 COMP PLAN DESIGNATION: _____ TOPOGRAPHY: _____
 CURRENT USE: _____
 SURROUNDING USES:
 NORTH: _____ SOUTH: _____
 EAST: _____ WEST: _____

SPECIFIC PROJECT CRITERIA AND REQUIREMENTS ARE ATTACHED

General Checklist: Fees Public Notice Information Current Title Report Written Criteria Response Owner Signature

For detailed checklists, applicable criteria for the written criteria response, and number of copies per application type, turn to:

Design Reviewp. 12
Partition Tentative Platp. 14
Subdivision Tentative Platp. 17
Variance Checklistp. 20

The above statements and information herein contained are in all respects true, complete, and correct to the best of my knowledge and belief. Tentative plans must substantially conform to all standards, regulations, and procedures officially adopted by the City of Newberg. All owners must sign the application or submit letters of consent. Incomplete or missing information may delay the approval process.

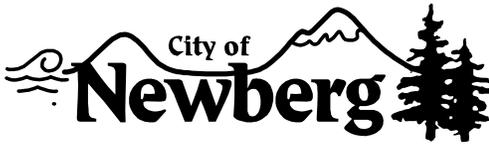
Paul Chiu 10/20/21
 Applicant Signature Date

 Owner Signature Date

Paul Chiu
 Print Name

 Print Name

CITY OF NEWBERG TYPE II
SAMPLE MAILED NOTICE



Community Development Department

P.O. Box 970 ▪ 414 E First Street ▪ Newberg, Oregon 97132
503-537-1240. Fax 503-537-1272 www.newbergoregon.gov

**WE WANT YOUR COMMENTS ON A PROPOSED NEW
DEVELOPMENT IN YOUR NEIGHBORHOOD**

The Elliott Road project manager submitted an application to the City of Newberg for Type II Determination. See below for details. You are invited to take part in the City's review of this project by sending in your written comments. You also may request that the Planning Commission hold a hearing on the application. The applicable criteria used to make a decision on this application for preliminary subdivision plan approval are found in Newberg Development Code 15.235.050(A). For more details about giving comments, please see the back of this sheet.

The development would include *(briefly describe what the project number of lots, size of lots, new streets created, etc.)*

APPLICANT: ***Paul Chiu (Elliott Road Project Manager)***
TELEPHONE: ***(503) 554-1751***

PROPERTY OWNER: ***City of Newberg (Elliott Road right-of-way)***

LOCATION: ***Elliott Road from Hwy 99W to Newberg High School***

TAX LOT NUMBER: ***Yamhill County TL 3217DB-06201, TL 3217DB-06200, TL 3217DB-06100,
and TL 3217DD-02501 (Elliott Road residential)***



We are mailing you information about this project because you own land within 500 feet of the proposed new project. We invite you to send any written comments for or against the proposal within 14 days from the date this notice is mailed. You also may request that the Newberg Planning Commission hold a hearing on the application by sending a written request during this 14-day period and identifying the issues you would like the Planning Commission to address.

If you mail your comments to the City, please put the following information on the outside of the envelope:

Written Comments: File No.XX
City of Newberg
Community Development
PO Box 970
Newberg, OR 97132

(City staff will give you the file number for your project at the time of application)

All written comments must be turned in by 4:30 p.m. on ***enter date two weeks from date you mailed notice***. Any issue which might be raised in an appeal of this case to the Land Use Board of Appeals (LUBA) must be submitted to the City in writing before this date. You must include enough detail to enable the decision maker an opportunity to respond. The applicable criteria used to make a decision on this application for preliminary subdivision plan approval are found in Newberg Development Code 15.235.050(A).

You can look over all the information about this project or drop comments off at Newberg City Hall, 414 E. First Street. You can also buy copies of the information for a cost of 25 cents a page. If you have any questions about the project, you can call the Newberg Planning Division at 503-537-1240.

The Community Development Director will make a decision at the end of a 14-day comment period. If you send in written comments about this project, you will be sent information about any decision made by the City relating to this project.

Date Mailed: ***Date notice is mailed***

PLANNING DIVISION FILE #: _____

**CITY OF NEWBERG
AFFIDAVIT OF NOTICING**

REFERENCE ATTACHED LIST(S)/NOTICE(S)

I, Paul Chiu (Elliott Rd Prj Mgr) do hereby certify that the attached Notice of Land Use Action was:

- a) mailed to the following list of property owners, by United States mail, postage prepaid
on _____;
(date)
- b) posted on the site according to standards established in Newberg Development Code §15.100.260
on N/A _____.
(date)

I acknowledge that failure to mail the notice in a timely manner constitutes an agreement by the applicant to defer the 120-day process limit and acknowledge that failure to mail will result in the automatic postponement of a decision on the application 15.100.210.(D)(2) _____.
(date)

Signature Date

Paul Chiu

Print name

Date: 10/20/21

RE: Elliott Road Improvement Project
WRITTEN STATEMENT FOR TYPE II DETERMINATION

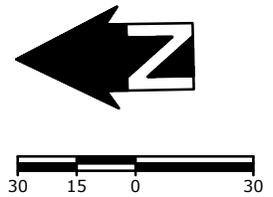
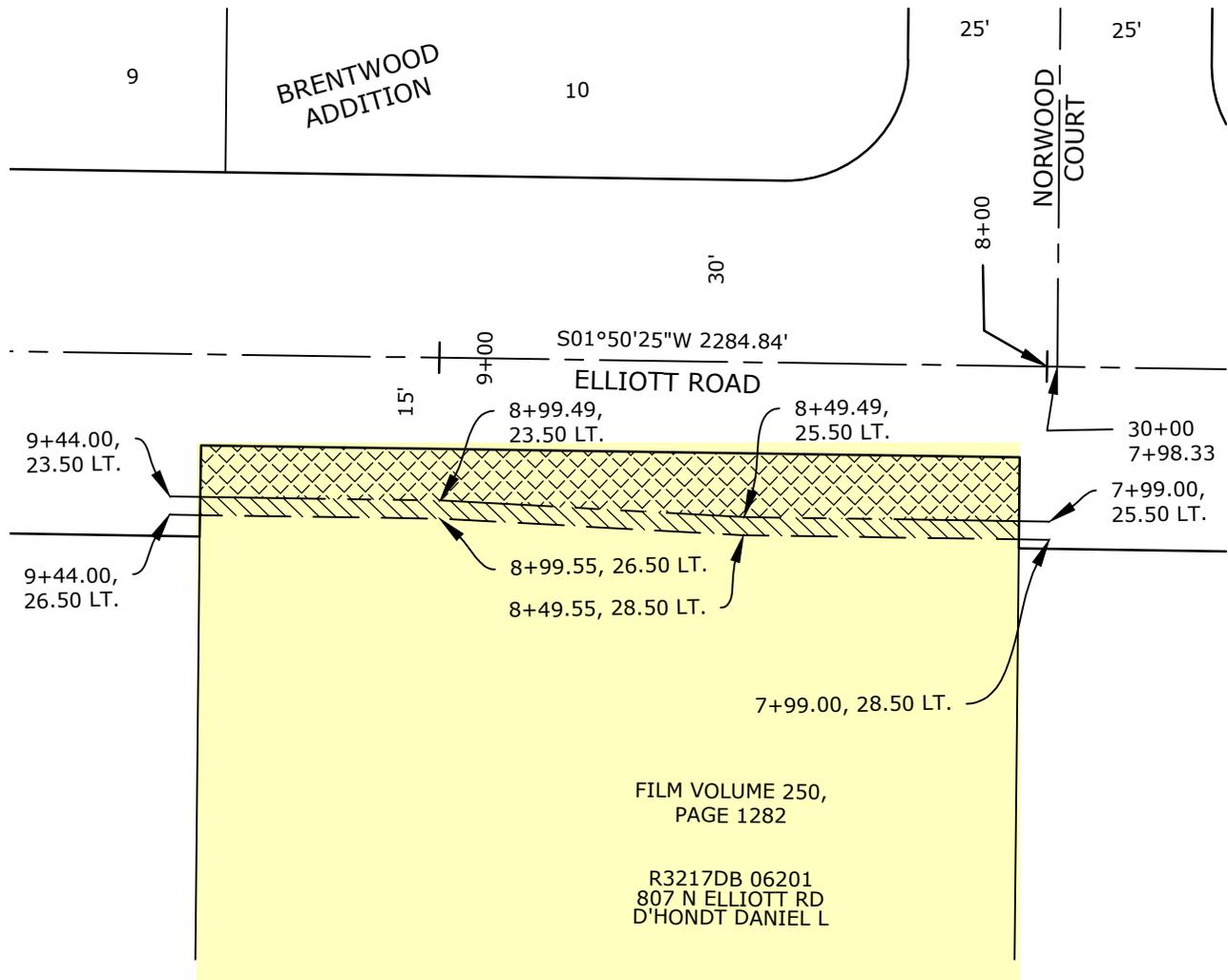
Given the following:

- NMC Section 15.505 applies to this Elliott Road Improvement Project, a capital improvement project.
- NMC 15.505.030(G) Street Width & Design Standards for Major Collector is 36' curb-to-curb (2-12' travel lanes, 2-6' bike lanes), 2-5' planter strips, 2-5' sidewalks → Total 56' of physical improvements. Typical sections show an additional 0.5' behind sidewalk to ROW. This gives a minimum ROW width of 57' as noted in NMC, or 28.5' ½ Street width.
- The Elliott Road Improvement Project is minimizing Right-of-way acquisition along the corridor resulting in four (4) parcels acquiring less than the minimum per NMC.
 - o File 7 – 807 Elliott Road: Varies from 25.5' to 23.5' of Right-of-way with an additional 3' of Public Utility Easement.
 - o File 9 – 911 Elliott Road: 23' of ROW with an additional 3' of Public Utility Easement.
 - o File 10 – 1007 Elliott Road: 25' of ROW with an additional 3' of Public Utility Easement.
 - o File 22 – 704 Elliott Road: Varies from 25' to 29' of Right-of-way with an additional 4.5' of Public Utility Easement.
- NMC 15.505.030(H): Modification of Street Right-of-Way Width requires a Type II application to the Planning Director.
 - o a. Unusual topographic conditions require a reduced width or grade separation of improved surfaces; or
 - o b. Lot shape or configuration precludes accessing a proposed development with a street which meets the full standards of this section; or
 - o c. A modification is necessary to preserve trees or other natural features determined by the City to be significant to the aesthetic character of the area; or
 - o d. A planned unit development is proposed and the modification of street standards is necessary to provide greater privacy or aesthetic quality to the development.

Reasons for Request for Variance:

- Federal Relocation Act: Right-of-way acquisition for this project must follow the Federal Uniform Relocation Act, codified by ORS 35.235.
 - o ORS35.235 Agreement for compensation; status of resolution or ordinance of public condemner; status of action of private condemner; agreement effort not prerequisite.
 - (1) Subject to ORS 758.015 and 836.050, whenever in the judgment of the condemner it is necessary to acquire property for a purpose for which the condemner is authorized by law to acquire property, the condemner shall, after first declaring by resolution or ordinance such necessity and the purpose for which it is required, attempt to agree with the owner with respect to the compensation to be paid therefor, and the damages, if any, for the taking thereof.
 - (2) The resolution or ordinance of a public condemner is presumptive evidence of the public necessity of the proposed use, that the property is necessary therefor and that the proposed use, that is the improvements or the project, is planned or located in a manner which will be most compatible with the *greatest public good and the least private injury*.
- If any of these properties were to redevelop in the future, the City would condition them to dedicate the ultimate ½ street ROW.

EXHIBIT A-1



-  1. RIGHT-OF-WAY DEDICATION
1,285 SQ. FT. MORE OR LESS
-  2. PERMANENT UTILITY EASEMENT
404 SQ. FT. MORE OR LESS

ELLIOTT ROAD
N. HWY.99 W. TO NEWBERG HIGH SCHOOL

CES | NW

13190 SW 68th Parkway, Suite 150
Tigard, Oregon 97223
503.968.6655 www.cesnw.com

FILE NUMBER: 07	SUBMITTAL DATE: 9/03/2020
TAX LOT: 06201	REVISED DATE: 9/10/2020
TAX MAP: 3 2 17DB	REVISED DATE:
ADDRESS: 807 ELLIOTT ROAD	

EXHIBIT A-2

File 7_807 Elliott Road
Proposed grading

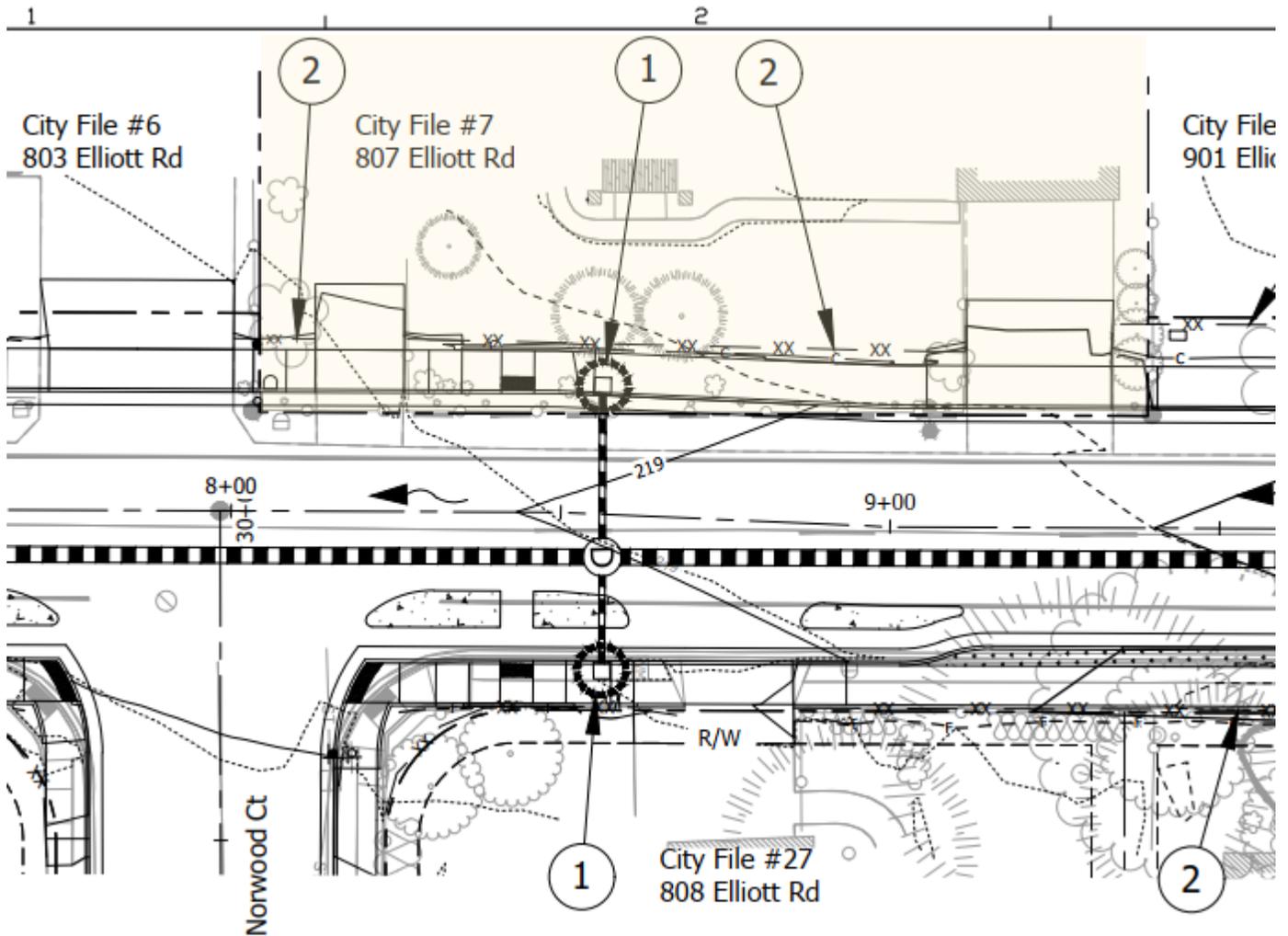
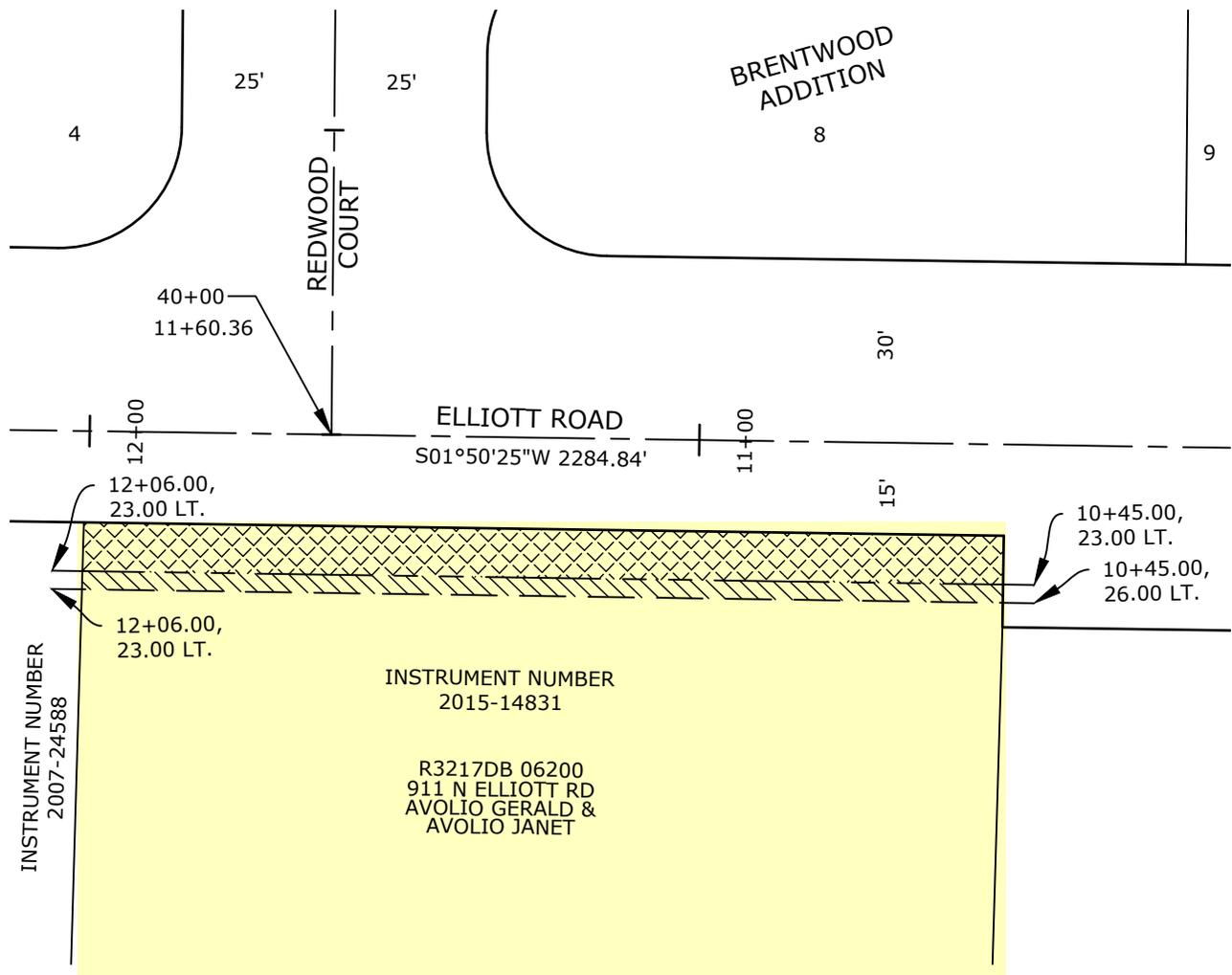


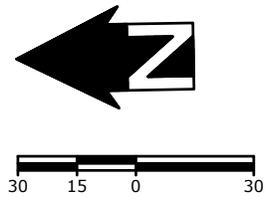
EXHIBIT B-1



INSTRUMENT NUMBER
2007-24588

INSTRUMENT NUMBER
2015-14831

R3217DB 06200
911 N ELLIOTT RD
AVOLIO GERALD &
AVOLIO JANET



-  1. RIGHT-OF-WAY DEDICATION
1,027 SQ. FT. MORE OR LESS
-  2. PERMANENT UTILITY EASEMENT
453 SQ. FT. MORE OR LESS

ELLIOTT ROAD
N. HWY.99 W. TO NEWBERG HIGH SCHOOL

CES | NW

13190 SW 68th Parkway, Suite 150
Tigard, Oregon 97223
503.968.6655 www.cesnw.com

FILE NUMBER: 09	SUBMITTAL DATE: 09/10/2020
TAX LOT: 06200	REVISED DATE:
TAX MAP: 3 2 17DB	REVISED DATE:
ADDRESS: 911 N ELLIOTT ROAD	

EXHIBIT B-2
File 9_911 Elliott Road
Proposed grading

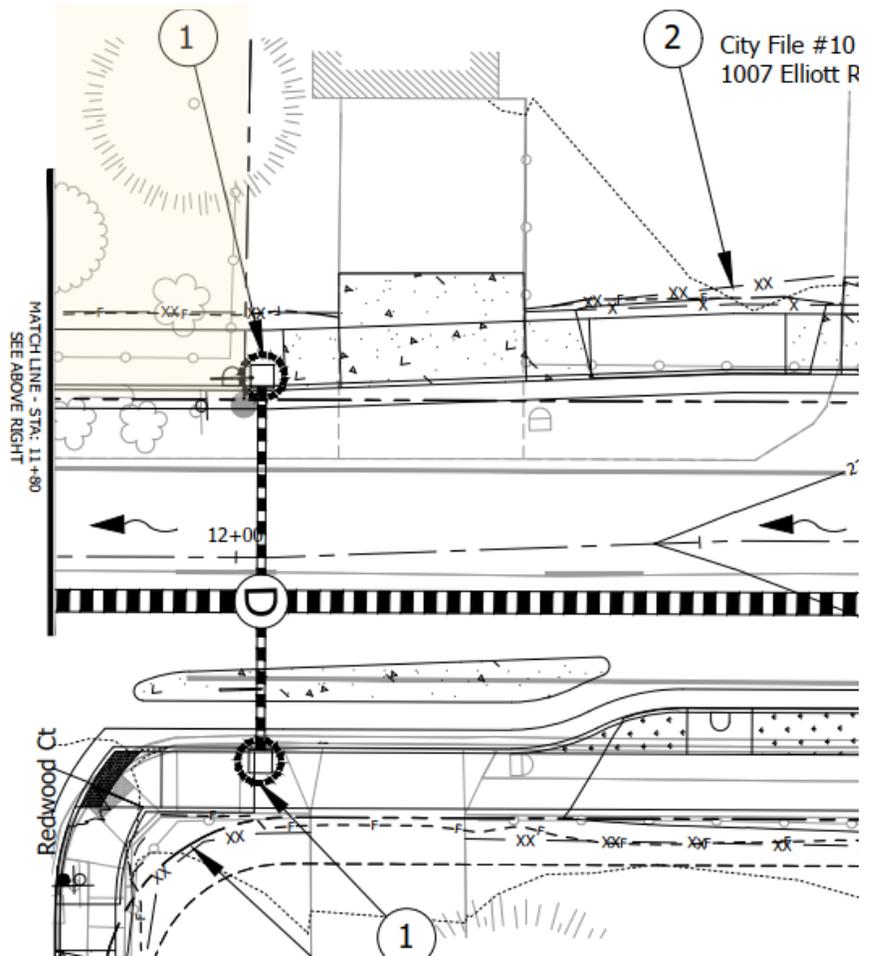
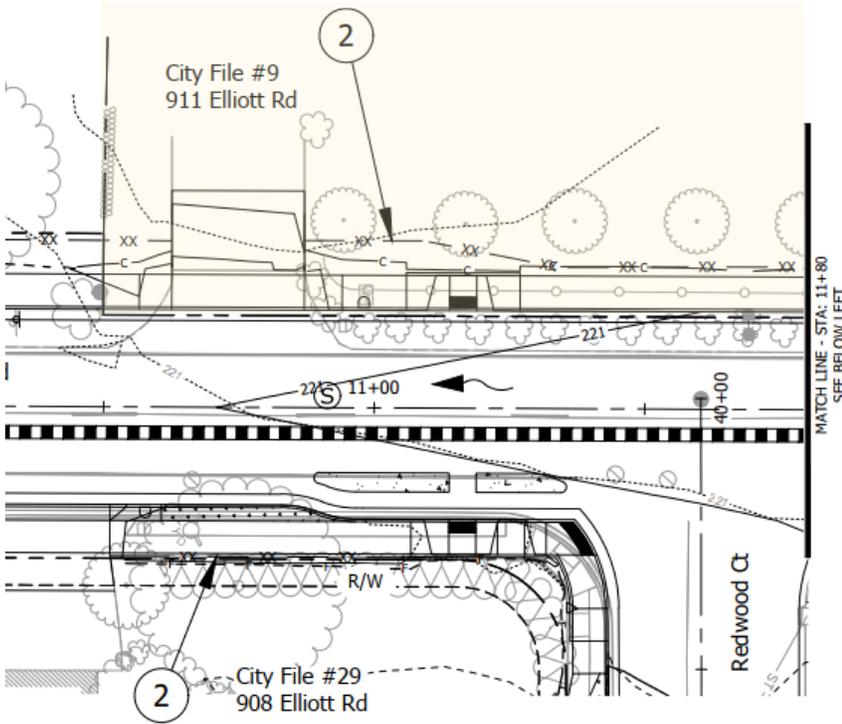
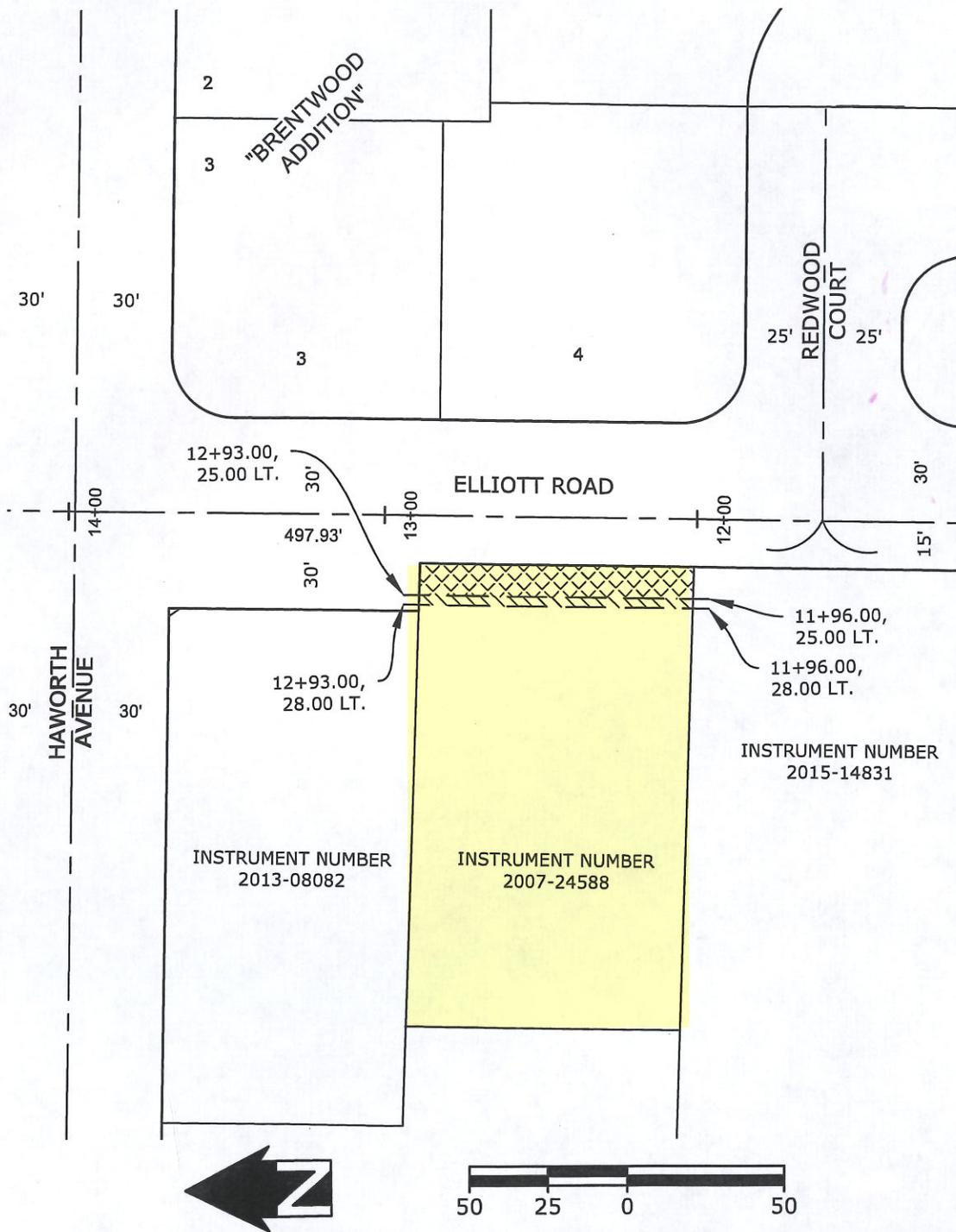


EXHIBIT C-1



-  1. RIGHT-OF-WAY DEDICATION
876 SQ. FT. MORE OR LESS
-  2. PERMANENT UTILITY EASEMENT
262 SQ. FT. MORE OR LESS

ELLIOTT ROAD
N. HWY.99 W. TO NEWBERG HIGH SCHOOL

CES | NW

13190 SW 68th Parkway, Suite 150
Tigard, Oregon 97223
503.968.6655 www.cesnw.com

FILE NUMBER: 10	SUBMITTAL DATE: 7/14/2021
TAX LOT: 06100	REVISED DATE:
TAX MAP: 3 2 17DB	REVISED DATE:
ADDRESS: 1007 N ELLIOTT ROAD	

EXHIBIT C-2

**File 10_1007 Elliott Road
Proposed grading**

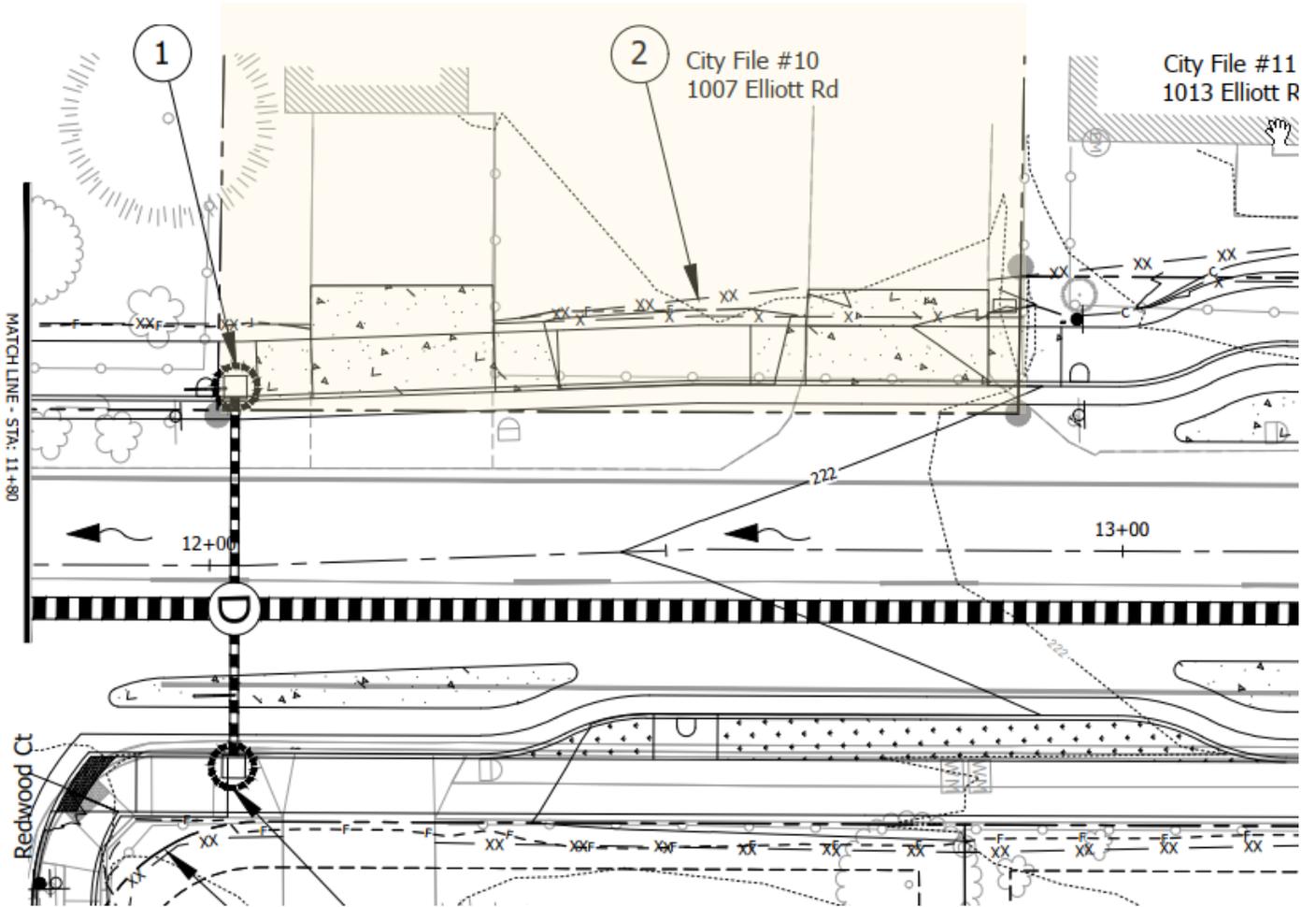


EXHIBIT D-1

R3217DD 02501
704 N ELLIOTT RD 9-12
CEDAR TERRACE LLC

P06-20

2

5+28.00,
29.50 RT.

4+20.42,
29.50 RT.

3+30.91,
31.71 RT.

3+08.00,
33.87 RT.

5+28.00,
25.00 RT.

4+20.36,
25.00 RT.

3+30.64,
27.21 RT.

3+08.00,
29.35 RT.

5+00

ELLIOTT ROAD

S01°50'25"W 2284.84'

4+00

30'



1. RIGHT-OF-WAY DEDICATION
2,258 SQ. FT. MORE OR LESS



2. PERMANENT UTILITY EASEMENT
947 SQ. FT. MORE OR LESS

ELLIOTT ROAD
N. HWY.99 W. TO NEWBERG HIGH SCHOOL

CES | NW

13190 SW 68th Parkway, Suite 150
Tigard, Oregon 97223
503.968.6655 www.cesnw.com

FILE NUMBER: 22

SUBMITTAL DATE: 09/10/2020

TAX LOT: 02501

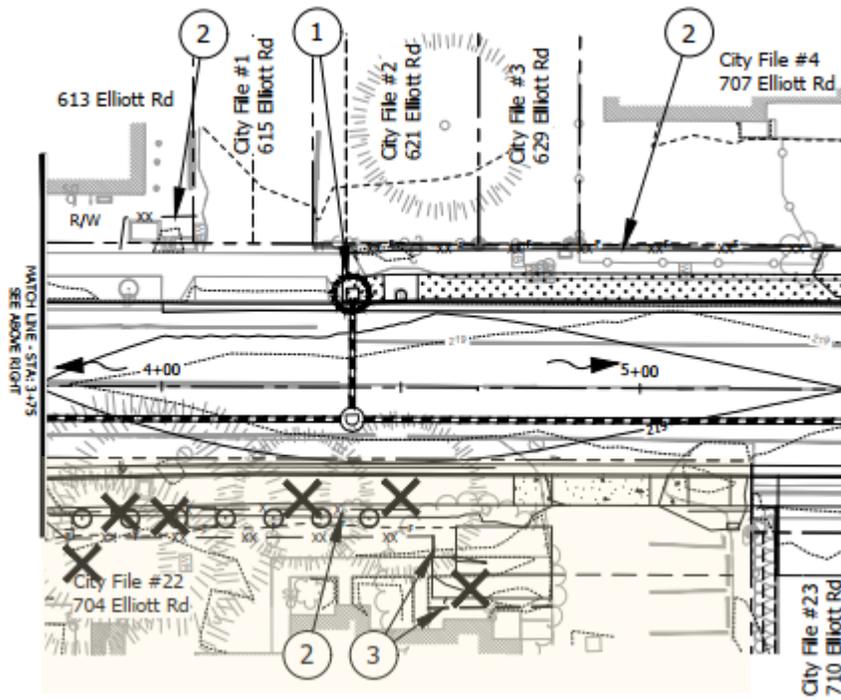
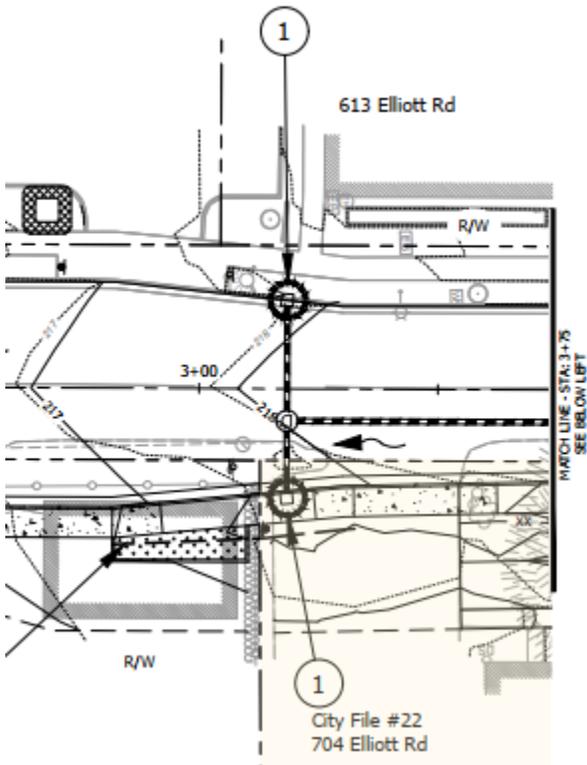
REVISED DATE:

TAX MAP: 3 2 17DD

REVISED DATE:

ADDRESS: 704 N ELLIOTT ROAD

EXHIBIT D-2
File 22_704 Elliott Road
Proposed grading





ELLIOTT ROAD - TYPE II NOTIFICATION LIST

MapTaxlot	SITUS1	SITUSCITY	SITUSZIP	OWNER1	OWNER2	MAILADD1	MAILCITY	MAILSTATE	MAILZIP
R3217DA 00802	1204 N ELLIOTT RD	NEWBERG	97132	SIMPSON ROBERT J	SIMPSON SHARON L	1204 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03600	808 N ELLIOTT RD	NEWBERG	97132	REAB AMANDA	REAB BENJAMIN	808 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00300	707 N ELLIOTT RD	NEWBERG	97132	BLACK GARRY L		707 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 06114	901 N ELLIOTT RD	NEWBERG	97132	HARRIMAN WILLIAM E		901 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03400	908 N ELLIOTT RD	NEWBERG	97132	MITCHELL BRIAN A		1203 SITKA AVE	NEWBERG	OR	97132
R3217DA 00400	2500 HAWTHORNE DR	NEWBERG	97132	J & R EQUITIES		478 17TH ST	SANTA MONICA	CA	90402
R3217DA 00700	1210 N ELLIOTT RD	NEWBERG	97132	SOLORZANO ANTONIO S		1210 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 01600	1205 N ELLIOTT RD	NEWBERG	97132	VAN BERGEN JEFFREY	VAN BERGEN CONTONA S	1205 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 02501	704 N ELLIOTT RD 9-12	NEWBERG	97132	CEDAR TERRACE LLC		13489 NW TREVINO ST	PORTLAND	OR	97229
R3217DA 00803	1202 N ELLIOTT RD	NEWBERG	97132	BYNON DEVIN R &	BYNON REGINA M	1202 ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00200	713 N ELLIOTT RD	NEWBERG	97132	GONZALEZ ANITA		713 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 02602	710 N ELLIOTT RD	NEWBERG	97132	LUCKY DOG PROPERTIES LLC		5250 ROGUE RIVER HWY	GRANTS PASS	OR	97527
R3217DB 06002	1013 N ELLIOTT RD	NEWBERG	97132	KOCH MICHAEL		19490 S FERGUSON TERRACE	OREGON CITY	OR	97045
R3217DA 00900	2505 HAWORTH AVE	NEWBERG	97132	CHURCH OF CHRIST		2503 HAWORTH AVE	NEWBERG	OR	97132
R3217DA 00300	1300 N ELLIOTT RD	NEWBERG	97132	J & R EQUITIES		478 17TH ST	SANTA MONICA	CA	90402
R3217DB 01500	1207 N ELLIOTT RD	NEWBERG	97132	SPENCER THOMAS K	SPENCER WANDA C	1207 ELLIOTT RD	NEWBERG	OR	97132
R3217DA 00801	1206 N ELLIOTT RD	NEWBERG	97132	WOOLEN NORMAN A	WOOLEN STEFFANIE	1705 GEMINI LN	NEWBERG	OR	97132
R3217DB 06201	807 N ELLIOTT RD	NEWBERG	97132	D'HONDT DANIEL L		807 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00500	609 N ELLIOTT RD	NEWBERG	97132	CFT NV DEVELOPMENTS LLC		1683 WALNUT GROVE AVE	ROSEMEAD	CA	91770
R3217DD 02900	2500 HAWORTH AVE	NEWBERG	97132	BROWN TYLER	PAUL KASIE	2500 HAWORTH AVE	NEWBERG	OR	97132
R3217DB 06001	1007 N ELLIOTT RD	NEWBERG	97132	PARKS JON H	PARKS GRACE L	20032 SORRENTO PL	BEND	OR	97702
R3217DC 00402	613 N ELLIOTT RD UNIT 101	NEWBERG	97132	KCK PARTNERS LLC		11483 SE AMITY-DAYTON HWY	DAYTON	OR	97114
R3217DB 05908	2409 HAWORTH AVE	NEWBERG	97132	BROWN MARCIA S TRUSTEE	BROWN MARCIA TRUST	2409 HAWORTH AVE	NEWBERG	OR	97132
R3217DD 04000	2500 NORWOOD CT	NEWBERG	97132	RINGSETH JAMES A	RINGSETH KATIE L	2500 NORWOOD CT	NEWBERG	OR	97132
R3217DB 01700	1203 N ELLIOTT RD	NEWBERG	97132	MULCAHY SHAUN P	MULCAHY KARRIE M	1203 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03000	1004 N ELLIOTT RD	NEWBERG	97132	ANDERSON NICHOLAS	ANDERSON STACY	1004 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 03900	2408 WILLOW DR	NEWBERG	97132	WOOLDRIDGE ELMER & BRENDA L		2408 WILLOW DR	NEWBERG	OR	97132
R3217DD 02502	2501 NE PORTLAND RD B	NEWBERG	97132	VEATCH ROGER A & CAROL E TRUSTEES FOR	VEATCH FAMILY TRUST	18450 NE HILLSIDE DR	NEWBERG	OR	97132
R3217DC 00303	621 N ELLIOTT RD E	NEWBERG	97132	ELLIOTT ESTATES LLC		17370 SW 108TH PL	TUALATIN	OR	97062
R3217DC 00400	615 N ELLIOTT RD	NEWBERG	97132	ELLIOTT ESTATES LLC		17370 SW 108TH PL	TUALATIN	OR	97062
R3217DB 06200	911 N ELLIOTT RD	NEWBERG	97132	AVOLIO GERALD &	AVOLIO JANET	911 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03500	900 N ELLIOTT RD	NEWBERG	97132	CHILD KATHLEEN		PO BOX 396	NEWBERG	OR	97132
R3217DD 02600	720 N ELLIOTT RD	NEWBERG	97132	SHUCKEROW PATRICK C	SHUCKEROW KATHERINE M	PO BOX 253	NEWBERG	OR	97132
R3217DD 02601	714 N ELLIOTT RD	NEWBERG	97132	THOMPSON EMILY		710 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00301	629 N ELLIOTT RD	NEWBERG	97132	ELLIOTT ESTATES LLC		17370 SW 108TH PL	TUALATIN	OR	97062
R3217DB 01800	2409 WILLOW DR	NEWBERG	97132	REDWINE GARY D &	REDWINE CHERI	2409 WILLOW DR	NEWBERG	OR	97132
R3217DB 01400	1209 N ELLIOTT RD	NEWBERG	97132	KWIESELEWICZ NATHALIE		1209 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00100	803 N ELLIOTT RD	NEWBERG	97132	CROCKETT WESLEY	CROCKETT BRANDY	803 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 00100	2409 HAWTHORNE DR	NEWBERG	97132	MARSHALL THOMAS L & TERESA		2409 HAWTHORNE DR	NEWBERG	OR	97132

R3217DA 00802
SIMPSON ROBERT J
1204 N ELLIOTT RD
NEWBERG, OR 97132

R3217DB 06114
HARRIMAN WILLIAM E
901 N ELLIOTT RD
NEWBERG, OR 97132

R3217DA 00700
SOLORZANO ANTONIO S
1210 N ELLIOTT RD
NEWBERG, OR 97132

R3217DA 00803
BYNON DEVIN R &
1202 ELLIOTT RD
NEWBERG, OR 97132

R3217DB 06002
KOCH MICHAEL
19490 S FERGUSON TERRACE
OREGON CITY, OR 97045

R3217DB 01500
SPENCER THOMAS K
1207 ELLIOTT RD
NEWBERG, OR 97132

R3217DC 00500
CFT NV DEVELOPMENTS LLC
1683 WALNUT GROVE AVE
ROSEMEAD, CA 91770

R3217DC 00402
KCK PARTNERS LLC
11483 SE AMITY-DAYTON HWY
DAYTON, OR 97114

R3217DB 01700
MULCAHY SHAUN P
1203 N ELLIOTT RD
NEWBERG, OR 97132

R3217DD 02502
VEATCH ROGER A & CAROL E
18450 NE HILLSIDE DR
NEWBERG, OR 97132

R3217DD 03600
REAB AMANDA
808 N ELLIOTT RD
NEWBERG, OR 97132

R3217DD 03400
MITCHELL BRIAN A
1203 SITKA AVE
NEWBERG, OR 97132

R3217DB 01600
VAN BERGEN JEFFREY
1205 N ELLIOTT RD
NEWBERG, OR 97132

R3217DC 00200
GONZALEZ ANITA
713 N ELLIOTT RD
NEWBERG, OR 97132

R3217DA 00900
CHURCH OF CHRIST
2503 HAWORTH AVE
NEWBERG, OR 97132

R3217DA 00801
WOOLEN NORMAN A
1705 GEMINI LN
NEWBERG, OR 97132

R3217DD 02900
BROWN TYLER
2500 HAWORTH AVE
NEWBERG, OR 97132

R3217DB 05908
BROWN MARCIA S TRUSTEE
2409 HAWORTH AVE
NEWBERG, OR 97132

R3217DD 03000
ANDERSON NICHOLAS
1004 N ELLIOTT RD
NEWBERG, OR 97132

R3217DC 00303
ELLIOTT ESTATES LLC
17370 SW 108TH PL
TUALATIN, OR 97062

R3217DC 00300
BLACK GARRY L
707 N ELLIOTT RD
NEWBERG, OR 97132

R3217DA 00400
J & R EQUITIES
478 17TH ST
SANTA MONICA, CA 90402

R3217DD 02501
CEDAR TERRACE LLC
13489 NW TREVINO ST
PORTLAND, OR 97229

R3217DD 02602
LUCKY DOG PROPERTIES LLC
5250 ROGUE RIVER HWY
GRANTS PASS, OR 97527

R3217DA 00300
J & R EQUITIES
478 17TH ST
SANTA MONICA, CA 90402

R3217DB 06201
D'HONDT DANIEL L
807 N ELLIOTT RD
NEWBERG, OR 97132

R3217DB 06001
PARKS JON H
20032 SORRENTO PL
BEND, OR 97702

R3217DD 04000
RINGSETH JAMES A
2500 NORWOOD CT
NEWBERG, OR 97132

R3217DB 03900
WOOLDRIDGE ELMER & BRENDA L
2408 WILLOW DR
NEWBERG, OR 97132

R3217DC 00400
ELLIOTT ESTATES LLC
17370 SW 108TH PL
TUALATIN, OR 97062

R3217DB 06200
AVOLIO GERALD &
911 N ELLIOTT RD
NEWBERG, OR 97132

R3217DD 02601
THOMPSON EMILY
710 N ELLIOTT RD
NEWBERG, OR 97132

R3217DB 01400
KWIESELEWICZ NATHALIE
1209 N ELLIOTT RD
NEWBERG, OR 97132

R3217DD 03500
CHILD KATHLEEN
PO BOX 396
NEWBERG, OR 97132

R3217DC 00301
ELLIOTT ESTATES LLC
17370 SW 108TH PL
TUALATIN, OR 97062

R3217DC 00100
CROCKETT WESLEY
803 N ELLIOTT RD
NEWBERG, OR 97132

R3217DD 02600
SHUCKEROW PATRICK C
PO BOX 253
NEWBERG, OR 97132

R3217DB 01800
REDWINE GARY D &
2409 WILLOW DR
NEWBERG, OR 97132

R3217DB 00100
MARSHALL THOMAS L & TERESA
2409 HAWTHORNE DR
NEWBERG, OR 97132

November 8, 2021

Doug Rux
Community Development
City of Newberg
PO Box 970
Newberg, OR 97132

Re: MISC221-0002 – Elliott Road

Dear Mr. Rux:

This letter is a response to your notice dated November 2, 2021, in particular the narrative response for Newberg Municipal Code 15.505.030(H):

Properties 807 N Elliott Road and 911 N Elliott Road requires modification of street right-of-way width because of the necessity to preserve existing trees and to minimize impact to the green features of the Elliott Road corridor according to subsection (H)(1)(c).

Property 1007 N Elliott Road requires transition of the narrower street right-of-way to full width to the north as a result of preserving existing trees to the south according to subsection (H)(1)(c).

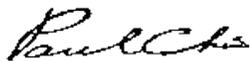
Please refer to Exhibits E-1, E-2 and E3 for the reasons due to the tree impact.

Property 704 N Elliott Road requires a 6-inch narrower street right-of-way from the 60-foot full width at the north corner of the existing multi-dwelling development to preserve the loss of an existing parking space and to minimize impact to the existing lot configuration according to subsection (H)(1)(b). The south portion of this lot does not have a right-of-way issue.

Please also note that the City Council authorized Resolution No. 2020-3681 on June 15, 2020 that they selected "The Buffered Bike Lane" design as the preferred alternative. This alternative specifically directed project staff to proceed with the narrower right-of-way design in some areas of the Elliott Road corridor.

With this additional information, please review this Type II application. Please also advise me when to mail the Neighborhood Notice. If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Chiu".

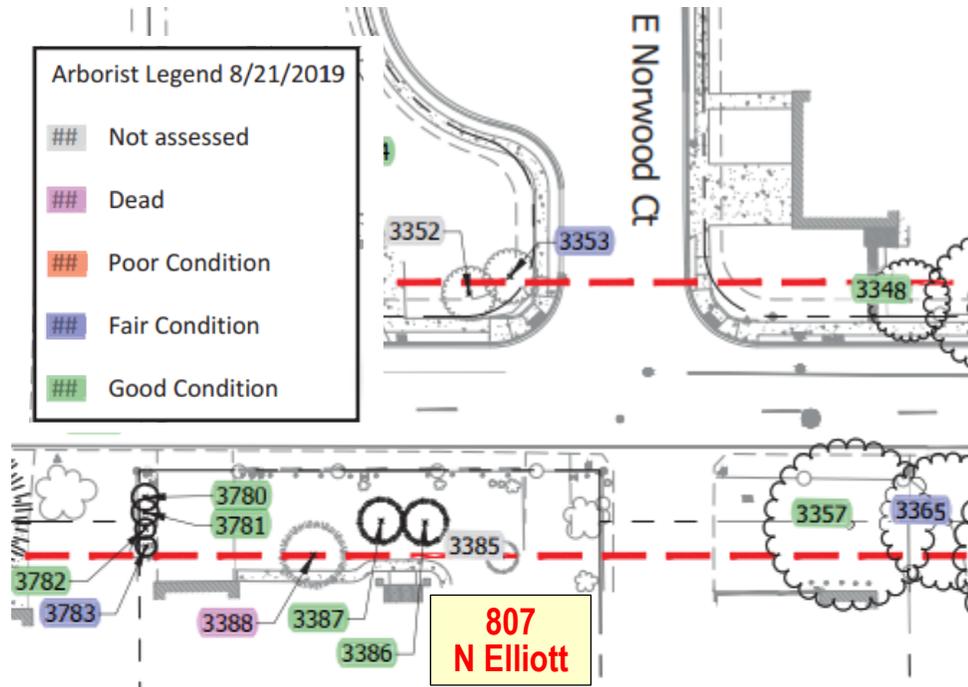
Paul Chiu, PE
Project Manager

Attachments as noted above

EXHIBIT E-1

Date of Response to CDD Notice (via email): 11/8/2021

RE: 807 N Elliott
Tree Survey (8-21-19)



No.	Location	Type	Common Name	Species Name	DBH ¹	C-Rad ²	Cond ³	Comments	Treatment
3385	Priv Prop	Con						Not assessed - below 6" diameter	
3386	Priv Prop	Con	palm	<i>Arecaceae</i> spp.	*9	8	G		
3387	Priv Prop	Con	palm	<i>Arecaceae</i> spp.	*9	8	G		
3388	Priv Prop	Con	spruce	<i>Picea</i> spp.	*23	0	D	Completely dead	
3780	Priv Prop	Dec	apple	<i>Malus</i> spp.	6	5	G	Diameter measured at lower trunk below codominant stem juncture	
3781	Priv Prop	Dec	apple	<i>Malus</i> spp.	7	6	G	Diameter measured at lower trunk below codominant stem juncture	
3782	Priv Prop	Dec	apple	<i>Malus</i> spp.	8	6	G	Diameter measured at lower trunk below codominant stem juncture	
3783	Priv Prop	Dec	apple	<i>Malus</i> spp.	6	4	F	Diameter measured at lower trunk below codominant stem juncture	

¹DBH is tree diameter at breast height measured 4.5-feet above ground level in inches; codominant stems originating below 4.5-feet are separated by a common or indicated as quantity x size. Where noted, diameter was measured below 4.5-feet. *Asterisk indicates limited visual tree assessment due to access limitations on private properties; size was visually estimated and observations were limited to public rights of way only.

²C-Rad is the average crown radius measured in feet.

³Cond is an arborist assigned rating to generally describe the condition of individual trees as follows-

- D: Dead
- P: Poor Condition
- F: Fair Condition

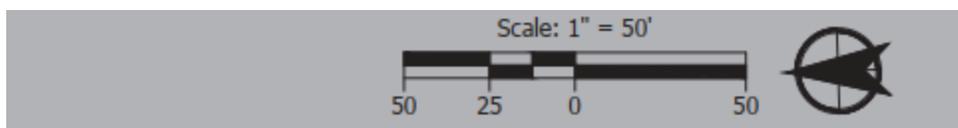
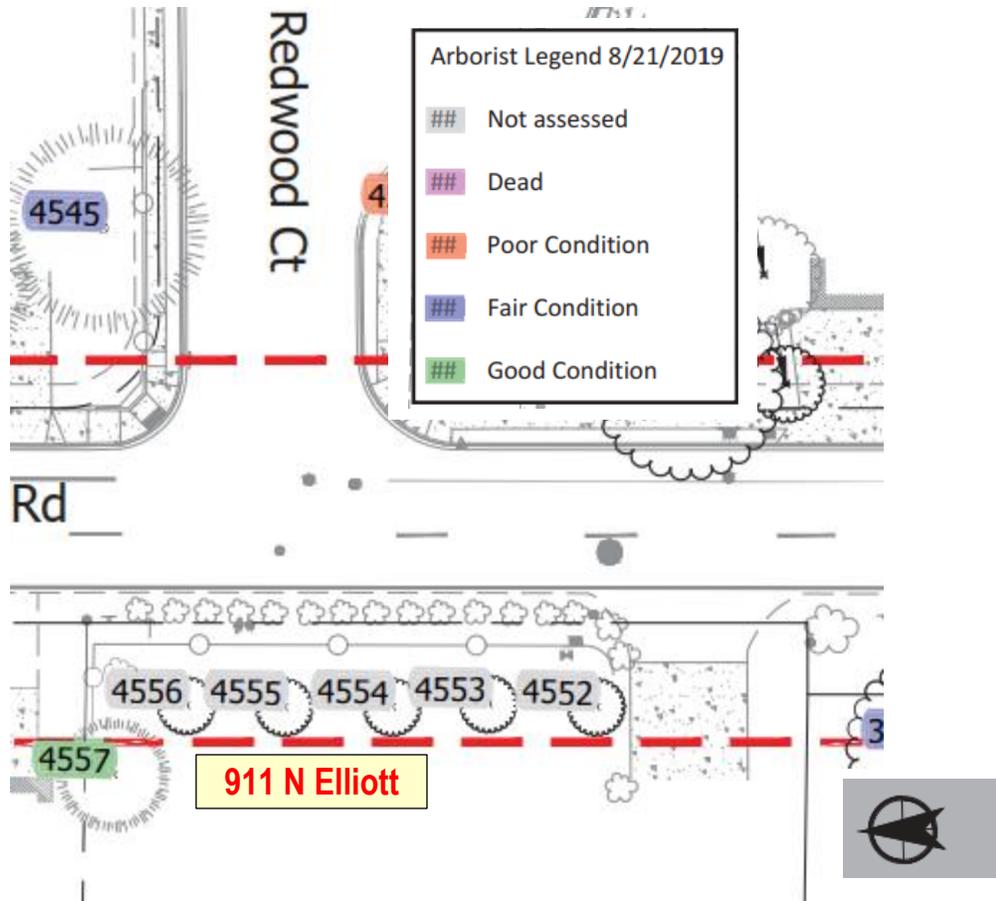


EXHIBIT E-2

Date of Response to CDD Notice (via email): 11/8/2021

RE: 911 N Elliott
Tree Survey (8-21-19)



No.	Location	Type	Common Name	Species Name	DBH ¹	C-Rad ²	Cond ³	Comments	Treatment
4552	Priv Prop	Dec						Not assessed - below 6" diameter	
4553	Priv Prop	Dec						Not assessed - below 6" diameter	
4554	Priv Prop	Dec						Not assessed - below 6" diameter	
4555	Priv Prop	Dec						Not assessed - below 6" diameter	
4556	Priv Prop	Dec						Not assessed - below 6" diameter	
4557	Priv Prop	Con	blue spruce	<i>Picea pungens</i>	*11	14	G	Long live crown	

¹DBH is tree diameter at breast height measured 4.5-feet above ground level in inches; codominant stems originating below 4.5-feet are separated by a common or indicated as quantity x size. Where noted, diameter was measured below 4.5-feet. *Asterisk indicates limited visual tree assessment due to access limitations on private properties; size was visually estimated and observations were limited to public rights of way only.

²C-Rad is the average crown radius measured in feet.

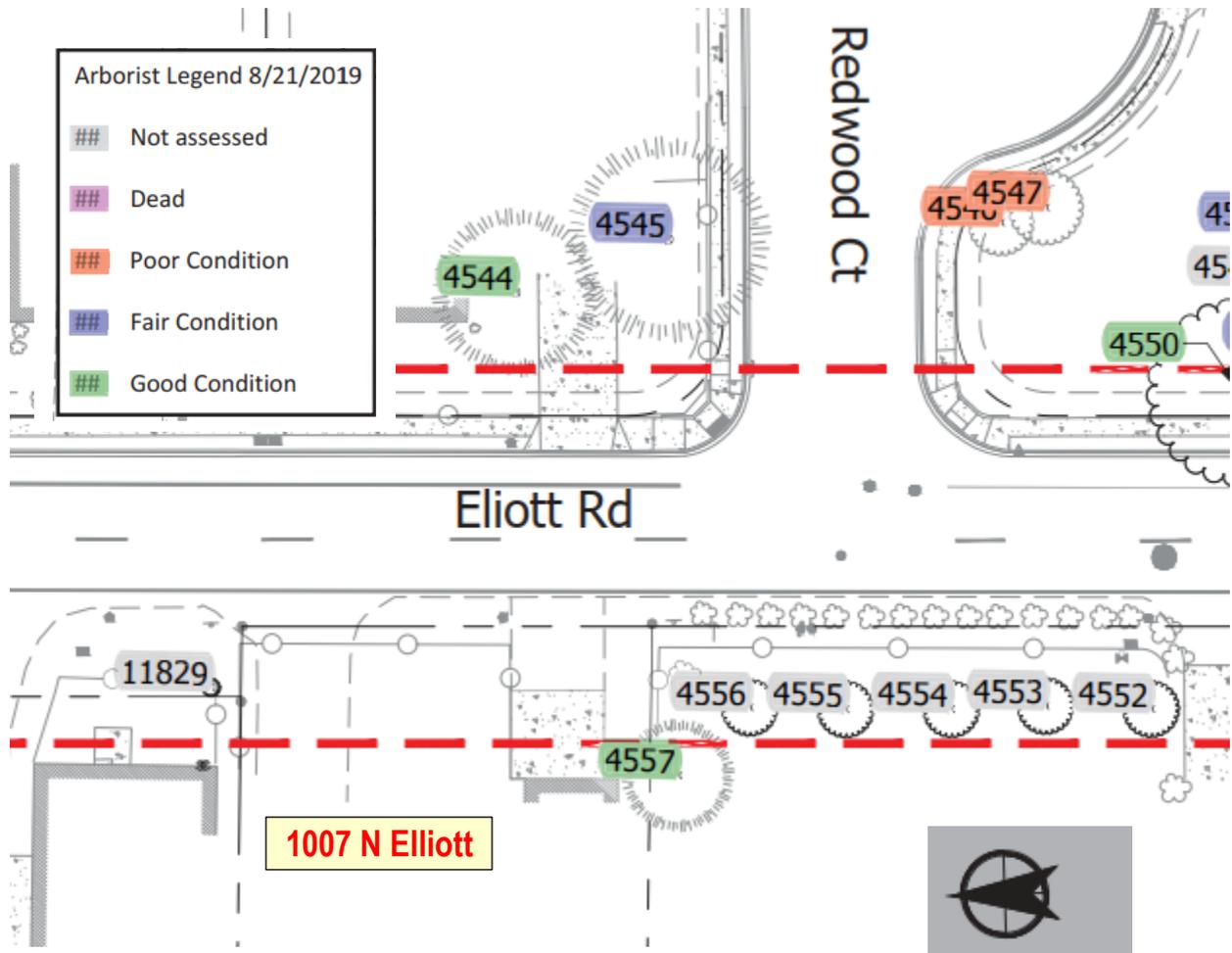
³Cond is an arborist assigned rating to generally describe the condition of individual trees as follows-

- D: Dead
- P: Poor Condition
- F: Fair Condition
- G: Good Condition

EXHIBIT E-3

Date of Response to CDD Notice (via email): 11/8/2021

RE: 1007 N Elliott
Neighboring Tree Survey (8-21-19)



No.	Location	Type	Common Name	Species Name	DBH ¹	C-Rad ²	Cond ³	Comments	Treatment
4557	Priv Prop	Con	blue spruce	<i>Picea pungens</i>	*11	14	G	Long live crown	
11829	ROW	Con						Not assessed - below 6" diameter	

¹DBH is tree diameter at breast height measured 4.5-feet above ground level in inches; codominant stems originating below 4.5-feet are separated by a common or indicated as quantity. Where noted, diameter was measured below 4.5-feet. *Asterisk indicates limited visual tree assessment due to access limitations on private properties; size was visually estimated and observations were limited to public rights of way only.

²C-Rad is the average crown radius measured in feet.

³Cond is an arborist assigned rating to generally describe the condition of individual trees as follows-

- D: Dead
- P: Poor Condition
- F: Fair Condition
- G: Good Condition

Attachment 2: Public Comments

Find messages, documents, photos or people



Home

Compose

To Mr. Paul CHIU

CC / BCC

19

Elliott Rd. Project Comments

Good morning Mr. Chiu:

Thank you for the opportunity to submit comments on the proposed Elliott Road Project. My comments follow:

- 1) I am surprised at the extensive work planned , which I understand will cost in excess of \$3,000,000 to dress a road to a high school parking lot.
- 2) I very much do understand and support the need for sidewalks on both sides of Elliott Road for the safety and convenience of pedestrians As you know this would require the City acquiring part of my front yard.
- 3) Every week I walk many miles of Newberg City streets. Many streets here have sidewalks on only one side of the street. Many streets do not have sidewalks on either side. I also have noticed many, many sidewalks in the city are in bad need of extensive repair work. May I suggest , if only sidewalks were installed on Elliott Rd. any excess funds could/should be used installing new and repairing old sidewalks in the City.
- 4) I was told by one of your staff that the Elliott Rd. Project requires widening the road because widening the road will help reduce the speed of traffic.. I believe permanent speed cameras would immediatly solve the speed problem at a much reduced cost.

Bst Rgds

RECEIVED
NOV 22 2021

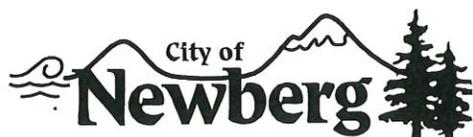
Initial: _____

Send



Good morning Mr Chiu:
 I sent comments per your
 Request by e mail as
 detailed in this cc.
 Thank you for the opportunity
 to submit comments on the
 Elliott Rd. Project
 Best Rgds
 Gerry Avolio
 [Signature]

CITY OF NEWBERG TYPE II
MAILED NOTICE



Community Development Department

P.O. Box 970 • 414 E First Street • Newberg, Oregon 97132
503-537-1240. Fax 503-537-1272 www.newbergoregon.gov

**WE WANT YOUR COMMENTS ON A PROPOSED NEW
DEVELOPMENT IN YOUR NEIGHBORHOOD**

The Elliott Road project manager submitted an application to the City of Newberg for Type II Determination. See below for details. You are invited to take part in the City's review of this project by sending in your written comments. The applicable criteria used to make a decision on this application are found in Newberg Development Code 15.505.030(H). For more details about giving comments, please see the back of this sheet.

The development would include right of way improvements for the N Elliott Road corridor from Highway 99W north to Newberg High School. Proposed improvements include pavement, curb and gutter, sidewalk, ADA ramps, bicycle lanes, storm drainage, wastewater pipeline, water main, street lighting, conversion from aerial to underground power line, traffic calming and roadway safety features, and landscape enhancement.

- APPLICANT: *Paul Chiu (Elliott Road Project Manager)*
- TELEPHONE: *(503) 554-1751*
- PROPERTY OWNER: *City of Newberg (Elliott Road right-of-way)*
- LOCATION: *Elliott Road from Hwy 99W to Newberg High School*
- TAX LOT NUMBER: *Yamhill County TL 3217DB-06201, TL 3217DB-06200, TL 3217DB-06100, and TL 3217DD-02501 (Elliott Road residential)*



Site map with project location (N Elliott Road) highlighted as shown above (arrows pointing to properties for Type II determination)

From:
Miguel Gonzales
713 N Elliott Road
Newberg, OR 97132

November 30, 2021

RECEIVED

DEC - 1 2021

To:
City of Newberg
Community Development Department
PO Box 970
Newberg, OR 97132

Initial: _____

Subject: City Of Newberg File No. MISC221-0002 Type II Application -Land Use

I, Miguel Gonzales, do NOT approve of the subject Type II application.

It is fundamental, and a part of land use law and the city's own code that the Owner must approve of the application, even approve of and sign the land use application.

The City does NOT meet the provisions of NMC 15.505.030(h) because you have failed to have the owners sign the land use application.

Below is the relevant code and key case examples below in **Yellow**

Additionally, and

of equal or GREATER IMPORTANCE the city has made no serious effort to address the many concerns and suggestions of Elliott Road residents including those presented at the Newberg City Council Meeting on 3/15/2016.



Miguel Gonzales

CC: Attorney - Tyler Smith

Via US Mail (1st class) and hand delivered

Via email (courtesy of Daniel DHondt) to all City Council members

15.100.030 Type II procedure.

- A. Type II development actions shall be decided by the [director](#).
- B. Type II actions include, but are not limited to:
1. Site design review.
 2. [Variances](#).
 3. [Manufactured dwelling parks](#) and [mobile home parks](#).
 4. [Partitions](#).
 5. Subdivisions, except for subdivisions with certain conditions requiring them to be processed using the Type III process, pursuant to NMC [15.235.030\(A\)](#).
- C. The [applicant](#) shall provide notice pursuant to the requirements of NMC [15.100.200](#) et seq.
- D. The [director](#) shall make a decision based on the information presented and shall issue a [development permit](#) if the [applicant](#) has complied with all of the relevant requirements of this [code](#). The [director](#) may add conditions to the permit to ensure compliance with all requirements of this [code](#).
- E. Appeals may be made by an affected party, Type II, in accordance with NMC [15.100.160](#) et seq. All Type II development action appeals shall be heard and decided by the [planning commission](#).
- F. If the [director](#)'s decision is appealed as provided in subsection (E) of this section, the [hearing](#) shall be conducted pursuant to the Type III [quasi-judicial hearing](#) procedures as identified in NMC [15.100.050](#).
- G. The decision of the [planning commission](#) on any appeal may be further appealed to the [city council](#) by an affected party, Type III, in accordance with NMC [15.100.160](#) et seq. and shall be a review of the record supplemented by written or oral arguments relevant to the record presented by the parties.
- H. An [applicant](#) shall have the option to request at the time the [development permit](#) application is submitted that the proposal be reviewed under the Type III procedure. [Ord. [2813](#) § 1 (Exh. A § 3), 9-5-17; Ord. [2747](#) § 1 (Exh. A § 4), 9-6-11; Ord. [2451](#), 12-2-96. Code 2001 § 151.022.]

15.100.090 Development permit application.

Applications for [development permits](#) shall be submitted upon forms established by the [director](#). An application shall consist of all materials required by this [code](#), including the following information:

- A. A completed [development permit](#) application form.
- B. Proof that the property affected by the application is in the exclusive ownership of the [applicant](#), or that the [applicant](#) has the consent of all [owners](#) of the affected property.
- C. Other information required by this [code](#).
- D. The applicable fees. [Ord. [2451](#), 12-2-96. Code 2001 § 151.040.]

Relevant Cases:

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. A local government does not err in failing to require an easement holder to sign or authorize the landowner's permit application, where the code requires only the "owner" to sign and the code defines "owner" to refer only to the owner of record, not easement holders. *Kane v. City of Beaverton*, 56 Or LUBA 240 (2008).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Any error in a hearings officer's conclusion that the terms of an easement allow a public utility to file a land use application without the property owner's signature is harmless, where the code allows a public utility with condemnation authority to sign land use applications, and there is no dispute that the applicant is a public utility with condemnation powers under applicable statutes. *Cyrus v. Deschutes County*, 46 Or LUBA 703 (2004)

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where the applicant is a general partnership, a code requirement that the application bear the signature of the applicant is satisfied if the record indicates the person who signed the application is a general partner. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994)

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where a local code provision requires the consent of all property owners affected by a land use application, a present owner must sign the application, notwithstanding an agreement obligating the present owner to convey the property in the future to a party who signed the application. *Johnston v. City of Albany*, 34 Or LUBA 32 (1998)

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. A county errs in deferring the requirement to obtain the signatures of all property owners to a subsequent administrative proceeding, in which staff are granted the discretion to determine whether the county signature

requirement is preempted or rendered invalid under federal law. Citizens Against LNG v. Coos County, 63 Or LUBA 162 (2011).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. A county errs in deferring a county code requirement to obtain the signatures of all property owners to a subsequent administrative proceeding that does not provide notice or opportunity for public input, in which staff is granted the discretion to determine whether a circuit court order condemning an easement or less-than-fee interest in property “obviates” the need to obtain the signature of the fee owner. Citizens Against LNG v. Coos County, 63 Or LUBA 162 (2011).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where the purpose of a zoning code requirement that a permit application be initiated in one of six specified ways is to ensure that the current property owner or purchaser of the affected property knows about and agrees with the application, and the record establishes that the current property owner agrees with the application, the county’s procedural error in allowing the permit application to be initiated in other than one of the six ways specified in the zoning code could not prejudice a permit opponent’s rights and provides no basis for reversal or remand. Womble v. Wasco County, 54 Or LUBA 68 (2007).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where the county code requires the signature of all owners of the property, and to ensure compliance with respect to a proposed pipeline crossing multiple properties the county imposes a condition requiring that the approval becomes effective only when the utility provider supplies all required signatures, an ambiguity in the condition regarding whether all signatures of all property owners are required for the approval to become effective is not a basis to remand the decision, where it is reasonably clear from the condition and findings that the county intended that all signatures of all owners be obtained before the approval becomes effective and Page 2 of 11 building permits for any part of the pipeline can be obtained. Citizens Against LNG v. Coos County, 63 Or LUBA 162 (2011).

25.2 Local Government Procedures – Authority to Act. A county has authority or jurisdiction to deny a permit application on its merits, where the permit applicant fails to demonstrate he was authorized to submit the permit application but the code limitations on who can submit permit applications do not impose a “jurisdictional” requirement. Base Enterprises, Inc. v. Clackamas County, 38 Or LUBA 614 (2000).

25.2 Local Government Procedures – Authority to Act. The absence of relevant or even essential information in an application does not preclude consideration by the city, although it may result in a denial of the application. Sullivan v. City of Woodburn, 31 Or LUBA 192 (1996).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A provision in a local subarea plan allowing submittal of master plan application without the consent of all owners of property subject to the application does not violate ORS 227.175(1). Lowery v. City of Keizer, 48 Or LUBA 568 (2005)

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where intervenors filed a conditional use permit application as an agent of the property owner, there is no violation of the provision in ORS 215.416(1) stating that an owner of property may apply for a permit. Silani v. Klamath County, 22 Or LUBA 735 (1992)

12/01/2021

Elliott Road Development Resident Comment

File No MISC221-0002

Dear City Council & Paul Chiu,

As a landowner along Elliott Rd, I am writing to state that I am in opposition to the bike lanes included in the Elliott Road Improvement Project.

I continue to be opposed to adding bike lanes on Elliott Road by way of taking homeowners property. Here are my reasons why:

1. The number of people that will actually use bike lanes on this road is low. We have low bike traffic in all of Newberg and extremely low bike traffic on this road.
2. A big reason City Council wants bike lanes is for the students locally commuting to school, particularly for Newberg High School Students. However, the number of bikes on the bike racks at this school are low.
3. Most bikers don't use bike lanes anyways and will either ride with traffic on the street if they are a regular/confident biker or the less confident bikers (children) will use sidewalks. As a mother, I know, even with bike lanes I would still ask my kids to ride on the sidewalk which is safer for children.
4. The 10 year plan of taking street parking from Haworth and Deborah to make connecting bike lanes from Elliott Rd. is incredibly faulty. Both Haworth and Deborah have a significant number of cars parked on the street every single day, especially in front of Multi-Family Housing Complexes. The reality is, these complexes need that overflow parking and to take it away for rarely used bike lanes is going to negatively impact these families.

Simply stated, I do not agree that the number of possible bikers that might use the bike lanes on Elliott Rd. will outweigh the impact this proposed road expansion will have on the property owners of Elliott Rd. or the impact bike lanes will have on the residents of Haworth and Deborah in the coming years.

Sincerely,
Brandy Crockett
803 N Elliott Rd
Newberg OR 97132

RECEIVED

DEC - 1 2021

Initial: _____

James A Talt
 201 Crestview Dr
 Newberg, OR 97132
 (503) 554 5461

November 29, 2021 Page 1/3

City of Newberg
 Community Development Department
 PO Box 970
 Newberg, OR 97132

RECEIVED

DEC - 1 2021

Initial: _____

Subject: Elliott Road Improvement

Reference: City Of Newberg File No. MISC221-0002 Type II Application -Land Use

Attention Newberg City and City Council Members,

This letter documents requested modifications to the Type II Land Use Application described in the referenced file. The proposed modifications herein will achieve the cities goals of sidewalks, curbs, gutters, ADA compliance, improved lighting and safety on Elliott Road while also preserving the home environments of the Elliott Rd citizenry and their needed on-street parking. The proposals save annex compensation money and also provide immediate inexpensive improvements to current bike routes to the Newberg school and sport complexes located on Deborah Road.

Proposed Modifications

- A) **'Fast track' the completion of bike lanes on Deborah Rd from 99W to Haworth and designate both sides as No Parking. (See photo 1)** This will immediately improve bike access and safety to the Newberg schools and sport complexes and reduces a need for bike lanes on Elliott Rd. There are no residences on that portion of Deborah Rd and the business have ample *on-site* parking so there is no demand for *on-street* parking. Newberg's Transportation Safety Plan (TSP) currently lists Deborah Rd as both a Critical Bicycle Route and a Minor Collector (ref TSP pages 26 & 37) and it does not yet have its bike lanes! The TSP refers to this as a **Bike Lane Gap** (ref TSP page 29)
- B) **Reclassify Elliott Rd from a Major Collector to a Local Residential street. Add needed road improvements for Safety, Accessibility, ADA, Drainage, etc. and with on-street parking and Shared Lane Markings for bikes from Haworth south to 99W.** This will preserve the approx. 25 on-street parking spots in daily use by residents that will otherwise be lost in the current plan (Where are

they to park?). The TSP repeatedly states that high priority be given to providing on-street residential parking availability (ref TSP page 47).

- C) Omit Planter Strips.** The city plan removes Green Space from the yards of residents to create Green Spaces in planter strips. Leave the Green Space with the residents where, daresay, it will be better maintained. Also, Elliott Rd south of 99W does not have planter strips so this proposal results in a street design consistent with existing Elliott Rd segments (see photo 2).
- D) Add road improvements per (B) above and create bike lanes from Haworth north to the High School. Designate no street parking on this one block stretch.** The proposed changes will provide safe access for bikes traveling south to Haworth from the Hawthorne and Willow neighborhoods and from there East to the schools, or the Aquatic Center to the West. There is currently no parking on either side of that portion of Elliott because of drainage ditches and no residences front onto Elliott.

Though the TSP designates N. Elliot Rd a Major Collector (TSP page 37), it is a **Major Collector in name only**. It is only two blocks long and has only 3 intersecting streets. The adjacent neighborhoods south of Haworth have their own residential street access to 99W and do not use Elliott Rd. 90% of Haworth traffic continues East-West on Haworth to Villa or Springbrook. This is also true of the high school drivers who are only in attendance 180 days per year. Traffic on Elliott is low and so is the speed limit. Additionally, the portion of Elliott Rd from Haworth to 99W fails the various setback requirements for a Major Collector (TSP page 40). Overall, it is much easier to envision Elliott Rd as a Residential Street than a Major Collector.



Photo 1: Deborah Road leading from 99W towards Newberg Schools and sports complexes. Classified as a Minor Collector. Needs dedicated bike lanes. Has no need of on-street parking. Note that it does not have planter strips.



**Photo 2: Elliott Road south of 99W.
No planter strips.**

Conclusion

The reference city plan will totally change the yard and home environments of the N. Elliott Road residents and does NOT address their repeatedly expressed concerns for on-street parking (ref Council Mtg 3/15/21).

City Planning has made no serious effort to address these issues directly face-to-face with Elliott residents.

Proposed herein are workable alternatives to Newberg's Type II Land Use request. They represent one of several different solutions that could be explored if only the City Council will vote to reopen the Elliott Road project and not allow Newberg City to **steamroll Elliott residents** using outside consultants that produce fancy videos and claim that they have produced a net gain in parking (ref Council Mtg 3/15/21).

Please vote NO on the cities Type II application and then vote to revisit the whole plan and make this a model for how the many future city projects should be developed thereby proving that we are truly Better Together.

Regards,

Jim Talt

Tyler Smith

From: Tyler Smith
Sent: Wednesday, December 1, 2021 9:55 AM
To: Paul Chiu; Doug Rux
Cc: Tyler Smith; Dan Dhondt
Subject: Comments, objections and legal arguments about File No. MISC221-0002

(Via US Mail and e-mail)
 City of Newberg
 Community Development
 PO Box 970
 Newberg Oregon 97132

RECEIVED
 DEC - 6 2021
 Initial: _____

File No. MISC221-0002 (Elliot Road Variance Request)

Dear Community Development Director, Newberg City Council and Staff:

I write to you today to note a few legal reasons why your proposed Application must be denied. As you are aware our law firm represents Mr. Daniel Dhondt and Cedar Terrace, LLC in relation to their property rights.

- 1) Newberg Municipal Code requires the Owner of the real property in question to approve of the application or be the applicant. Rajiv Jain and Cedar Terrace, LLC as well as Dan Dhondt, own 704 N Elliot Rd, and 807 N Elliot Rd respectively. They are not the applicant, nor do they approve of land use actions covering their property.
- 2) Your application does not meet any of the criteria of NMC 15.505.030(h)

There are other options, such as downgrading the street category of Elliot Rd., delaying this action, and reducing the impacts and condemnations of the owners' property that are preferred. While we appreciate this attempt to minimize the taking of private property for public use, nonetheless we oppose your attempts to condemn and take my client's private property for your preferred use and plan. My clients and other interested community members have suggested alternatives, and alternate plans.

This application was just discovered by my clients so this is a rushed response. However points 1 and 2 above are elaborated as follows:

1) Newberg Municipal Code 15.100.090 (b) bars this application from being approved.

NMC 15.100.090 requires that land use application provide PROOF that the property affected by the application is in the exclusive ownership of the applicant, or otherwise have the consent of all owners of the property.

- a. Newberg does not have the consent of my clients Daniel Dhondt, nor Rajiv Jain who is the managing member of Cedar Terrace LLC. The property that they own as fee simple title owners is included as a part of your application. See Exhibit A-1 of your application packet shows the portion owned by Mr. Dhondt, and See Exhibit D-1 of your application, which shows the portion owned by Cedar Terrace LLC. Thus Mr. Chiu (the Applicant) nor the City of Newberg is the

“exclusive owner” of the property, nor does the Applicant have the consent of these two owners. The application must therefore be denied under the NMC. Oregon law is clear on this point. Where a local code provision requires the consent of all property owners affected by a land use application, a present owner must sign the application. *Johnston v. City of Albany*, 34 Or LUBA 32 (1998).

- b. Furthermore, the application page itself, shows that no-owner has signed the application. Mr. Chiu apparently signed for the applicant on October 20, 2021 but he is neither the owner nor the owner’s agent.

2) Newberg Municipal Code 15.505.030(h) is not met here.

NMC 15.505.030 is cited as the basis for this variance. Modification of Street Right-of-Way and Improvement Width. The director, pursuant to the Type II review procedures of Chapter 15.220 NMC, may allow modification to the public street standards of subsection (G) of this section, when the criteria in both subsections (H)(1) and (2) of this section are satisfied:

“ The modification is necessary to provide design flexibility in instances where:

- a. Unusual topographic conditions require a reduced width or grade separation of improved surfaces; or
- b. Lot shape or configuration precludes accessing a proposed development with a street which meets the full standards of this section; or
- c. A modification is necessary to preserve trees or other natural features determined by the city to be significant to the aesthetic character of the area; or
- d. A planned unit development is proposed and the modification of street standards is necessary to provide greater privacy or aesthetic quality to the development.”

Each of those four possible alternatives is not met

(a) Here, there is no unusual topographic condition, the City is simply proposing to widening the street against the wishes of these owners. Proposing to enter onto these owners lots, take their property for public use and establish wider easements and rights of way over Cedar Terrace.

(b) The lot shape and configuration is not affective access at all since the access will exist either way and these properties are already street frontage properties.

(c) There have not yet been any findings nor assertions about which trees are being determined to be significant, but the opponents agree there are some important and significant trees that should not be disturbed by the proposed plan.

(d) No planned unit development is proposed.

CONCLUSION

This application cannot be approved because the owners of at least some of the the property in question are not the applicant, and have not consented to this application. This violates the NMC and Oregon law.

 Tyler Smith | Owner and Founding Attorney
 Tyler Smith & Associates P.C.
 503-266-5590 (work) | 503-266-5594 (work)
 503-212-6392 (fax)

tyler@ruralbusinessattorneys.com

Our Law Firm: <http://www.RuralBusinessAttorneys.com>

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Attachment 4: Memorandum From Paul Chiu to Doug Rux, March 1, 2022



3/1/22

To: Doug Rux
 From: Paul Chiu
 RE: File 7 – D'Hondt at 807 N Elliott Road

Couple of questions from Doug with answers from Paul:

1. What documentation do you have in your project case file on negotiations with Mr. Dhondt on ROW acquisition?

I have a paper file folder. In summary:

- 11/6/20 UF sent certified General Info Notice to D'Hondt (emailed Tyler Smith his attorney) intent for property acquisition.
- 11/10/20 OVG mailed a 15-day notice to D'Hondt prior to conducting a site visit for real estate valuation.
- 5/5/21 UF emailed Smith that UF will send offer packets.
- 5/10/21 UF sent certified Offer Letter to D'Hondt and Smith, starting the clock for 40 day consideration.
- 6/3/21 Smith emailed City Attorney James Walker his clients need more time to see if the offer is close.
- 6/15/21 D'Hondt sent a certified mail to UF declining the offer and noted the process of getting an appraisal and should have relocation benefits.
- 6/18/21 Smith emailed UF cc D'Hondt and Walker that offer was too low and thus declined it.
- 6/21/21 UF emailed Smith cc D'Hondt and Walker that UF will wait for D'Hondt's counteroffer, and also wanted to explain relocation benefit and how eligibility is determined.
- 7/30/21 UF sent a certified letter to D'Hondt and Smith explaining why relocation benefit does not apply and that D'Hondt is not eligible to receive it.
- 8/18/21 UF emailed D'Hondt (webmandan@gmail.com) if he is still planning to submit a counteroffer.
- 8/20/21 D'Hondt replied UF's email that they absolutely intend to formulate a reply and submit a counteroffer. D'Hondt noted that his pest control business has been owned and operated from this location for over 30 years.
- 9/10/21 UF emailed D'Hondt asking for a timeline of when they will be sending the counteroffer.
- 9/13/21 Smith emailed UF that the City's offer failed to consider major things, alleging that City did not comply with ORS 35.510 and 35.520.
- 10/8/21 UF turned over File 7 folder to City of Newberg.

2. How long has outreach and negotiations with property owners along the corridor been occurring?

- 5/6/19 Council meeting (Resolution 2019-3547) hiring KAI as project consultant.
- 5/8/19 Newberg Graphic published news on Elliott Road reconstruction.
- 6/4/19 Staff drafted a response to keep Council informed.
- 7/23/19 (Also 7/24/19) Walking Tours with neighbors.
- 9/18/19 Open House at Mabel Rush School Library, sharing concepts and soliciting public feedback.
- 11/18/19 Presented project info to Council.
- 5/18/20 Presented preferred alternative to City Council.
- 5/28/20 Online Neighborhood Meeting via zoom.
- 6/10/20 Presented project to Traffic Safety Commission via zoom.
- 6/15/20 Council meeting (Resolution 2020-3681) directing staff to negotiate with property owners.
- 8/2020 More meetings with neighbors.
- 3/15/21 Presented Information to Council.
- 10/7/21 Memo to City Manager for Council update.

Outreach started in July 2019 – see timeline above.

Negotiation began after Council's direction in June 2020.

3. How many times and on what dates has this project been before City Council for briefings, feedback and direction?

See timeline in #2.

4. What do you have in your case file that shows Mr. Dhondt is the owner of the parcel at 807 N Elliott Road based on your ROW negotiations?

There is a paper copy in the file showing a Northwest Title Company Statutory Warranty Deed dated 12/6/1990.

Abbreviation:

KAI = Kittelson & Associates, Inc. (consultant)

OVG=Oregon Valuation Group (subconsultant)

UF = Universal Field Services, Inc. (subconsultant)

Engineering Division • P.O. Box 970, Newberg, OR 97132 • engineering@newbergoregon.gov • (503) 537-1273

Attachment 5: Johnston v. City of Albany, 34 OR LUBA 32 (1998)

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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

SUE JOHNSTON and ROBLEY W.)
JOHNSTON,)
)
Petitioners,)
)
vs.)
)
CITY OF ALBANY,)
)
Respondent,)
)
and)
)
RICHARD B. LEFOR, JACQUELINE O.)
LEFOR, DAVID KRAEMER, and)
THORNTON COFFEY, dba PERIWINKLE)
PARK PARTNERSHIP,)
)
Intervenors-Respondent.)

LUBA No. 97-076
FINAL OPINION
AND ORDER

Appeal from City of Albany.

Corinne C. Sherton, Salem, filed the petition for review and argued on behalf of petitioners. With her on the brief was Johnson Kloos & Sherton.

No appearance by respondent.

David Hilgemann, Salem, filed the response brief and argued on behalf of intervenors-respondent. With him on the brief was Graves & Hilgemann.

LIVINGSTON, Administrative Law Judge; HANNA, Administrative Law Judge, participated in the decision.

REMANDED 01/13/98

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a decision by the city planning staff
4 to approve a site plan review application for a 68-unit
5 manufactured home park.

6 **MOTION TO INTERVENE**

7 Richard B. LeFlor, Jacqueline O. LeFlor, David Kraemer
8 and Thornton Coffey, dba Periwinkle Park Partnership
9 (intervenors), move to intervene on the side of respondent.
10 There is no opposition to the motion, and it is allowed.

11 **FACTS**

12 Intervenors seek to establish a 68-unit manufactured home
13 park on a site zoned Residential Single Family District (RS-
14 6.5). The precise size of the site is in dispute; it is
15 approximately 10 acres. The subject property is bordered to
16 the north by Grand Prairie Road, and to the south by
17 Periwinkle Creek. Under Albany Development Code (ADC) 3.050,
18 manufactured home parks are permitted in an RS-6.5 zone
19 subject to site plan review.

20 Intervenors submitted their original site plan review
21 application on July 29, 1996. Record 306. After a comment
22 period, and in response to issues raised by neighboring
23 property owners, intervenors submitted a revised site plan on
24 December 2, 1996, and a second revised site plan on February
25 18, 1997. Record Exhibits B, D. The city mailed notice to
26 neighboring property owners on February 21, 1997, providing a

1 14-day comment period that closed on March 7, 1997. Record
2 120. The city planning division issued its decision approving
3 intervenors' application, with conditions, on March 31, 1997.
4 Record 5. On April 4, 1997, the city issued an amended notice
5 of decision, including an additional finding of fact and
6 condition of approval regarding storm drainage. Record 1.

7 This appeal followed.

8 **FIRST ASSIGNMENT OF ERROR**

9 Petitioners contend that the city failed to comply with
10 an applicable provision of the city's land use regulations by
11 acting on an application that includes property not owned by
12 the applicants. Petitioners argue that the city's decision
13 violates ADC 1.203(2), which requires that a land use
14 application shall include a

15 "[s]igned statement indicating that the property
16 affected by the application is in the exclusive
17 ownership or control of the applicant, or that the
18 applicant has the consent of all partners in
19 ownership of the affected property."

20 **A. Tax Lot 115**

21 The proposed manufactured home park includes all or
22 portions of five tax lots, which are numbered 100, 102, 103,
23 113, and 115. Record 18; Record Exhibit H. Tax lot 115 is
24 located on the northern edge of the subject property, and is
25 owned by Larry and Linda Klinefelter. The eastern half of tax
26 lot 115 contains a house owned and occupied by the
27 Klinefelters; the western half contains a septic system and
28 drain field for that house. The western half of tax lot 115

1 is included as part of the proposed manufactured home park in
2 the application approved by the city.

3 Petitioners contend that intervenors failed to obtain the
4 necessary consent of the Klinefelters to include the western
5 half of tax lot 115 in the development application.
6 Petitioners point to a letter in the record from the
7 Klinefelters to the city planner in which they raise numerous
8 objections to the application. Record 82-83.

9 Regarding the ownership of the western portion of tax lot
10 115, the findings set forth in the staff report state:

11 "Tax Lot 115 is subject to the terms and provisions
12 of a 1976 agreement * * *. In that agreement, a
13 former owner had agreed to convey the western
14 portion of the property in exchange for connection
15 to city services when available. This agreement has
16 not been challenged by any party, and accordingly
17 the portion of TL 115 has been included in the
18 subject property, the 1976 agreement serving as
19 consent to the application." Record 19.

20 The 1976 agreement was entered into by the Easdales and
21 the Wingos, when tax lot 115 was conveyed by the Easdales to
22 the Wingos. Under the agreement, the Wingos took title to
23 both the eastern portion of tax lot 115, containing the house,
24 and to the western portion, containing the drain field.
25 However, the agreement provides that the Wingos, or their
26 successors in interest, must reconvey the western portion of
27 the property back to the Easdales, or to their successors in
28 interest, within six months after the city provides an
29 available sewer connection to the property. Record 43-46.
30 The Klinefelters purchased tax lot 115 subject to the 1976

1 agreement.

2 Petitioners contend that the 1976 agreement, standing
3 alone, does not provide evidentiary support for the city's
4 finding that the requisite consent has been obtained under ADC
5 1.203(2). We agree. The 1976 agreement requires that the
6 Klinefelters must connect to the city sewer system within six
7 months after the city makes connection to a sewer line in an
8 adjoining street or sewer easement available. Record 45.
9 Only after the connection with the sewer line is made and the
10 existing septic system is abandoned must the Klinefelters
11 reconvey the western portion of tax lot 115 back to the
12 sellers. Record 46. Until that time, under the terms of the
13 agreement, the Klinefelters retain full control and possession
14 of tax lot 115 in its entirety. Under ADC 1.203(2), no
15 portion of that property can be included in a development
16 application without a signed statement indicating that
17 intervenor has obtained the consent of the Klinefelters. The
18 record contains no such signed statement. The city's
19 determination that the mere existence of the 1976 agreement
20 establishes the requisite consent to the application was in
21 error.¹

¹The copy of the 1976 agreement in the record before this Board contains only the signatures of the Easdales, and not the signatures of the Wingos, who are the Klinefelters' predecessors in interest. Record 46. Petitioners argue that the agreement is therefore unenforceable. If there is no version of the 1976 agreement that contains the signatures of the Wingos, petitioners may be correct. See, e.g., Martin v. Allbritton, 124 Or App 345, 349, 862 P2d 569 (1993). However, since we conclude that even if the agreement were enforceable, it would not constitute consent, we need not reach petitioners' argument that the agreement is not enforceable.

1 Intervenors contend that petitioners do not have standing
2 to raise an objection based on the lack of consent from the
3 Klinefelters, because only the Klinefelters can raise this
4 issue. Intervenors are incorrect. Petitioners appeared
5 below, and are entitled to challenge the city's conclusion
6 that the consent requirement of ADC 1.203(2) is satisfied by
7 the terms of the 1976 agreement. Although petitioners are not
8 parties to the 1976 agreement, petitioners have standing to
9 challenge the city's reliance on that agreement to satisfy an
10 applicable approval criterion.

11 This subassignment of error is sustained.

12 **B. Tax Lots 100 and 113**

13 Petitioners contend that the city's decision violates ADC
14 1.203(2) because there is no evidence in the record that a
15 city official with authority to do so consented to the
16 inclusion of city-owned portions of tax lots 100 and 113 in
17 the subject application. Regarding the ownership of tax lots
18 100 and 113, the staff report states:

19 "The ownership of a portion of TL 100 over
20 Periwinkle Creek became an issue when it was
21 discovered in early January 1997 that the City of
22 Albany had apparently received title in 1975 (Linn
23 County Vol 113, Page 116) but a closer examination
24 of the legal description disclosed an incorrect
25 bearing that the applicant was willing to contest.
26 The chain of title could not be resolved without
27 litigation. In lieu of litigation, the City agreed
28 to consent to the application due to the clouded
29 ownership interest of a portion of TL 100 in
30 exchange for other consideration.

31 "* * * The applicant negotiated with the City for
32 the acquisition of Tax Lot 113. The City agreed to
33 release a portion of TL 113 in exchange for other

1 consideration and consented to the application."
2 Record 18-19.

3 Petitioners argue that the record contains only
4 statements by city planning division staff that the city has
5 agreed to allow certain city-owned portions of tax lots 100
6 and 113 to be included in the application, and that

7 "[t]here are no actual documents in the record,
8 signed by a city official with responsibility for
9 the City's proprietary interests in real property,
10 allowing the City's portions of Tax Lots 113 and 100
11 to be included in a private manufactured home park."
12 Petition for Review 10-11.

13 We agree. ADC 1.203(2) requires a "[s]igned statement
14 indicating that * * * the applicant has the consent of all
15 partners in ownership of the affected property." Intervenors
16 point to the above-quoted findings set forth in the city staff
17 report as evidence that the city consented to the application.
18 However, the city's findings, which were issued as part of the
19 final decision, do not constitute substantial evidence in the
20 record supporting that decision.

21 Intervenors also argue that there is "ample evidence that
22 duly authorized representatives of [the city] consented to the
23 inclusion" of city-owned portions of tax lots 100 and 113.
24 Response Brief 9. First, we note that even if intervenors are
25 correct, the applicable criterion is not satisfied. ADC
26 1.203(2) requires that a land use application must include the
27 signed statement of the applicant, indicating that the
28 applicant either owns the property or has obtained the consent
29 of those who do. Aside from the above-quoted findings,

1 intervenors point only to a letter from an associate city
2 planner to intervenors stating that "the city has consented"
3 to including portions of the tax lots at issue as part of the
4 application. Record 59. However, that letter is dated March
5 11, 1997, which is one day after the close of the record, and
6 even if the letter had been included in the record, the
7 planners' statement would not satisfy ADC 1.203(2).

8 This subassignment of error is sustained.

9 The first assignment of error is sustained.

10 **SECOND ASSIGNMENT OF ERROR**

11 Petitioners contend that the city failed to comply with
12 provisions of the city's land use regulations applicable to
13 manufactured home park applications containing land within a
14 floodplain district. Specifically, petitioners argue that,
15 under applicable code provisions, the city was required to
16 process intervenors' application using a "Type III" process,
17 and that its failure to provide a required public hearing
18 prejudiced petitioners' substantial rights.

19 ADC 6.080 provides that the city's floodplain district
20 regulations, which are set forth in ADC 6.070 to 6.170, apply

21 "to all areas within the City of Albany that are
22 subject to inundation from a 100-year flood. These
23 areas are depicted on federal Flood Insurance Rate
24 Maps (FIRMs) and Floodway Maps by the letter A, AE,
25 or AO."

26 In its decision, the city concludes that, under the applicable
27 FIRMs, "for the stretch of Periwinkle Creek that flows through
28 the subject property, Zone A is contained within the channel

1 of the creek on the subject property." Record 30-31.
2 Specific regulations set forth at ADC 6.131 apply to
3 manufactured home parks that are planned in a floodplain
4 district:

5 "Manufactured home parks and manufactured home
6 subdivisions proposed in the floodplain district
7 shall be reviewed by the Planning Division.
8 Notwithstanding other provisions of this code, all
9 manufactured home park and subdivision applications
10 which contain land within the floodplain district
11 shall be processed under a Type III process. In
12 addition to the general review criteria applicable
13 to manufactured home parks and subdivisions in
14 Article 10, application for such within the
15 floodplain district shall include an evacuation plan
16 indicating alternate vehicular access and escape
17 routes." (Emphasis added).

18 Notwithstanding its determination that the subject
19 property contains Zone A land that is subject to inundation by
20 a 100-year flood, the findings adopted by the city conclude
21 that the provisions of ADC 6.131 relating to manufactured home
22 parks in floodplain districts do not apply because there will
23 be no homes placed in the floodplain area:

24 "The proposed development will be reasonably safe
25 from flooding because that portion of the subject
26 property within Periwinkle Creek that has been
27 identified as a flood hazard area, Zone A, has been
28 excluded from the proposed development and set aside
29 for open/ recreational space. The flood hazard area
30 will not be improved for the proposed development.
31 All manufactured homes will be sited on the portion
32 of the property outside the flood hazard area and
33 access to the proposed development will not be
34 impeded by the flood hazard area. Therefore, the
35 provisions for flood plain land use [ADC 6.070-
36 6.160], and particularly a manufactured home
37 development [ADC 6.131], are not applicable to this
38 request." Record 31. (Bracketed text in original.)

39 Petitioners argue, and we agree, that the above-quoted

1 findings fail to establish that the subject application does
2 not "contain land within the floodplain district," which is
3 the sole criterion for whether the provisions of ADC 6.131
4 apply. Further, the city's finding that "[t]he flood hazard
5 area will not be improved for the proposed development" cannot
6 be reconciled with the conditions of approval imposed by the
7 city that require intervenors to construct a 10-foot wide
8 paved bicycle/pedestrian path and an access ramp within the
9 flood hazard area. Record 7-8.

10 We conclude that the city's decision does not comply with
11 applicable provisions of the floodplain regulations set forth
12 in ADC 6.070 to 6.170, and that the decision must be remanded
13 for application of those provisions, and for any applicable
14 Type III procedures required by ADC 6.131. See Venable v.
15 City of Albany, 149 Or App 274, ___ P2d ___ (1997).

16 The second assignment of error is sustained.

17 **THIRD ASSIGNMENT OF ERROR**

18 **A. Access to Evidence**

19 Petitioners contend that during the course of the
20 proceedings below, they were improperly denied access to
21 certain documents related to the proposed mobile home park
22 that were submitted to the city planning staff prior to the
23 date the original application was filed. In response,
24 intervenors submit two affidavits of city staff who state that
25 petitioners were informed that any documents submitted to the
26 city by intervenors prior to the application date should not

1 be considered part of the application file. However,
2 according to intervenors and the city staff affidavits,
3 petitioners were never denied access to the entire file,
4 including the pre-application documents, and in fact had
5 regular access to the entire file. Based on the affidavits
6 submitted by both parties, we agree with intervenors.

7 This subassignment of error is denied.

8 **B. Acceptance of Evidence after Close of Comment Period**

9 Petitioners assert that the city improperly accepted
10 evidence from intervenors after the close of the final comment
11 period on March 7, 1997. Petitioners point to four documents
12 in the record that were received by the planning division
13 after March 7, 1997, and which were specifically relied upon
14 by the city in making the challenged decision. Among those
15 documents is the 1976 agreement on which the city based its
16 determination that the applicant had satisfied the "consent"
17 requirement of ADC 1.203(2), and which is the subject of
18 petitioners' first assignment of error. That document, along
19 with an attached warranty deed, was received by the county on
20 March 21, 1997. Record 43. According to petitioners, they
21 had no knowledge that those documents had been placed before
22 the decision maker until after the challenged decision was
23 issued on March 31, 1997. Petition for Review 20.

24 Intervenor respond that petitioners were not prejudiced
25 by this "procedural error" because they were generally aware
26 of the issues discussed in the disputed documents and were

1 able to raise arguments regarding those issues earlier in the
2 proceedings before the city. Regarding the 1976 agreement and
3 warranty deed, intervenors assert that because petitioners
4 were able to include extensive argument regarding those
5 documents in their brief before this Board, they were not
6 prejudiced in the proceedings below. Intervenors' arguments
7 are without merit. Where the city closes the 14-day comment
8 period required for a limited land use decision under ORS
9 197.195(3)(c)(A), but continues to accept additional evidence
10 from intervenors after the close of the 14-day period, the
11 city violates ORS 197.195(3)(c)(F) and ADC 1.330(4)(f).
12 Azevedo v. City of Albany, 29 Or LUBA 516, 520 (1995).

13 This subassignment of error is sustained.

14 The third assignment of error is sustained, in part.

15 **FOURTH ASSIGNMENT OF ERROR**

16 Petitioners contend that the city's findings regarding
17 the acreage of the proposed manufactured home park and the
18 related findings regarding the density of the proposed park
19 are not supported by substantial evidence in the record. The
20 findings adopted by the city state:

21 "1.2 The proposed development meets the minimum area
22 requirement for a manufactured home park
23 because the subject property is approximately
24 10.5 acres as calculated from Linn County
25 Assessor's records: Tax Lot 100, 5.7 acres;
26 Tax Lot 102, 2.28 acres; Tax Lot 103, 1.53
27 acres; a portion of Tax Lot 113, 0.4 acres; and
28 a portion of Tax Lot 115, 0.5 acres.

29 * * * * *

30 "1.3 The proposed 68-space development complies with

1 the density standard for a manufactured home
2 park because the 10.5-acre park area divided by
3 the 6,500 square foot minimum lot area of the
4 RS-6.5 zone yields a maximum of 70 spaces. The
5 resulting density is 6.5 spaces per acre."
6 Record 20.

7 This Board is authorized to reverse or remand a
8 challenged limited land use decision if it is "not supported
9 by substantial evidence in the record." ORS 197.828(2)(a).
10 Where petitioners challenge the evidentiary support for
11 findings addressing an applicable approval standard, and no
12 party cites any evidence in the record to support such
13 findings, the challenged decision must be remanded. Neuman v.
14 City of Albany, 28 Or LUBA 337, 346 (1994).

15 Petitioners are correct that the above-quoted findings
16 regarding park size and density are not supported by
17 substantial evidence in the record. Intervenors do not point
18 to any evidence in the record supporting the city's conclusion
19 that the proposed park will be 10.5 acres in size.² Rather,
20 intervenors rely exclusively on findings prepared by the
21 staff, which were not available until after the expiration of
22 the period for the submission of comments and evidence. The
23 staff findings state that the acreage determination is based

²The second notice of filing mailed by city planning staff states the size of the proposed park as 12.11 acres. Record 181, 197. The third notice of filing states the acreage as 10.88 acres. Record 120. The record also contains a February 26, 1997 letter from intervenors' own engineer, stating his conclusion, based on a review of the site plan, that "the total area within the park boundary is 9.68 acres." Record 105. The February 26, 1997 letter responds to a February 24, 1997 memorandum from a city planner that expresses concerns about the south property line of the subject property and the boundaries of tax lots 100 and 115. Record 110. This is the extent of the evidence in the record to which we are directed regarding the acreage of the proposed park.

1 on the county assessor's records. However, the data from the
2 county assessor is not in the record. Because the city's
3 findings regarding the acreage of the proposed park are not
4 supported by substantial evidence in the record, the
5 corresponding findings regarding the density standards set
6 forth in ADC 10.220 are also defective.

7 The fourth assignment of error is sustained.

8 **FIFTH ASSIGNMENT OF ERROR**

9 Petitioners contend that the challenged decision does not
10 comply with applicable standards regarding landscaping and
11 maintenance of common outdoor space. According to
12 petitioners, the decision fails to satisfy ADC 10.390, which
13 provides, in relevant part:

14 "Landscaping. All common areas within a
15 manufactured home park -- exclusive of required
16 buffer areas, buildings and roadways -- shall be
17 landscaped and maintained in accordance with the
18 following minimum standards per each 1,000 square
19 feet of open area.

20 "(1) One tree at least six feet in height.

21 "(2) Five shrubs or accent plants.

22 "(3) The remaining area containing walkways and
23 attractive ground cover at least 50% of which
24 must be living ground cover within one year of
25 planting."

26 The city's decision states:

27 "The only common area shown on the site plan is the
28 open/recreation space over Periwinkle Creek. As
29 noted under the recreation area standard * * *, the
30 open/recreation space over Periwinkle Creek will
31 remain in a natural condition without landscaping,
32 which would increase the difficulty of creek
33 maintenance and increase the flood hazard associated
34 with the creek. This area will be maintained in its

1 natural condition with the exception of the
2 construction of a pedestrian/bicycle path located on
3 the north side of the stream, and also with the
4 exception of periodic maintenance to maintain
5 adequate stream flow. For this reason, the standard
6 [of ADC 10.390] does not apply." Record 24.

7 Petitioners argue that the standards set forth in ADC
8 10.390 do not provide an exception from the landscape
9 requirements for manufactured home parks where the common
10 areas are located in a floodplain. Petitioners point out that
11 the only areas that are excepted from the common space
12 landscaping requirements of ADC 10.390 are required buffers,
13 buildings, or roadways, none of which are present in this
14 instance.

15 Intervenors respond that the pedestrian/bicycle path
16 located in the identified common area fits within the ADC
17 10.390 exception for roadways. According to intervenors, the
18 city's decision

19 "recognizes that the open/recreation space contains
20 a bicycle path/maintenance roadway which must be
21 kept clear of landscaping and other development to
22 facilitate periodic maintenance of the banks of
23 Periwinkle Creek to maintain adequate stream flows."
24 Response Brief 20.

25 Intervenors maintain that the city correctly concluded that
26 the requirements of ADC 10.390 do not apply to intervenors'
27 application.

28 We disagree. The challenged decision does not include
29 findings that the "required roadway" exception to the ADC
30 10.390 landscaping requirements applies to the Periwinkle
31 Creek common area as a result of the bicycle/pedestrian path.

1 Rather, the findings state that ADC 10.390 does not apply
2 because landscaping around the creek "would increase the
3 difficulty of creek maintenance and increase the flood hazard
4 associated with the creek." Record 24. Although this
5 conclusion may be correct, the city's decision does not
6 suggest that this site fits any exception to the requirements
7 set forth in ADC 10.390 regarding landscaping of common areas
8 in manufactured home parks.

9 The fifth assignment of error is sustained.

10 **SIXTH ASSIGNMENT OF ERROR**

11 Petitioners contend that the challenged decision does not
12 comply with applicable site plan review standards regarding
13 the compatibility of design and operating characteristics of
14 the proposed manufactured home park with surrounding
15 development and land uses. Petitioners argue that the city's
16 decision fails to demonstrate compliance with ADC 8.070(3),
17 which provides:

18 "Review Criteria. A site plan approval will be
19 granted if the review body finds that the applicant
20 has met all of the following criteria which are
21 applicable to the proposed development.

22 "* * * * *

23 "(3) The design and operating characteristics of the
24 proposed development are reasonably compatible
25 with surrounding development and land uses, and
26 any negative impacts have been sufficiently
27 minimized."

28 Petitioners argue that the findings adopted by the city
29 fail to adequately identify the physical characteristics of
30 the surrounding development and the proposed development, and

1 therefore fail to make the required assessment regarding
2 compatibility. Intervenors respond that, in its final
3 decision, the city

4 "carefully considered each of the four review
5 criteria set forth in ADC 8.070, and summarized its
6 analysis, findings, and conclusions at length in its
7 Staff Report. In conducting its review, [the city]
8 incorporated conditions of approval into its
9 decision in order to minimize any negative impacts
10 of the proposed development." Response Brief 22.

11 The findings describe past and present development
12 patterns in the area surrounding the subject property. These
13 development patterns are considered in the evaluation of the
14 physical design of the proposed development, including
15 building placement, setbacks, parking areas, external storage
16 areas, open areas and landscaping. Record 32-33. The
17 findings adequately address ADC 8.070(3).

18 The sixth assignment of error is denied.

19 The city's decision is remanded.

Planning Commission Agenda Item Report

Meeting Date: April 14, 2022

Submitted by: Doug Rux

Submitting Department: Community Development

Item Type: PC QUASI-JUDICIAL PUBLIC HEARING

Agenda Section:

Subject:

Conditional use permit approval to use a single-family dwelling as a vacation rental home

Suggested Action:

Adopt Planning Commission Order 2022-05.

Attachments:

[CUP22-0003 2035 N Heritage Way w Attachments.pdf](#)

PLANNING COMMISSION STAFF REPORT
VACATION RENTAL CONDITIONAL USE PERMIT
2035 N Heritage Way

HEARING DATE: April 14, 2022

FILE NO: CUP22-0003

REQUEST: Conditional use permit approval to use a single-family dwelling as a vacation rental home

LOCATION: 2035 N Heritage Way

TAX LOT: R3218AB 01211

APPLICANT/OWNER: Todd and Melissa Nelson

ZONE: R-2 (Medium Density Residential)

PLAN DISTRICT: MDR (Medium Density Residential)

ATTACHMENTS:

Planning Commission Order 2022-05 with:

Exhibit A: Findings

Exhibit B: Conditions of Approval

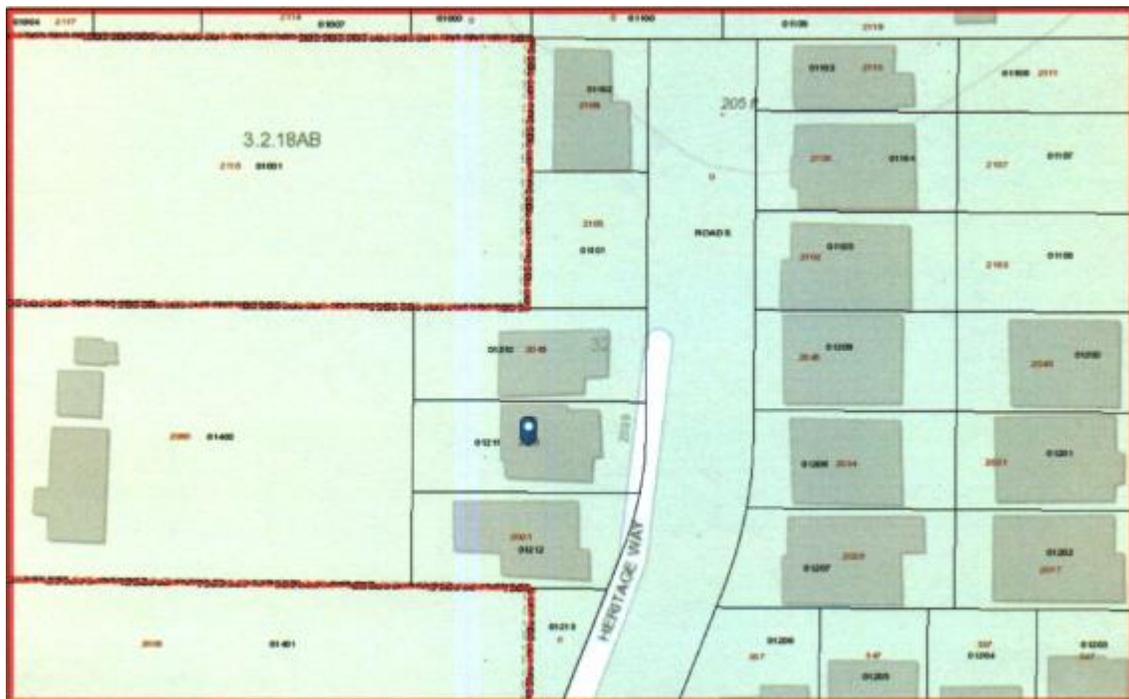
Attachment 1: Application

Attachment 2: Agency Comments

Attachment 3: Public Comments

A. DESCRIPTION OF APPLICATION: The applicant is requesting Conditional Use Permit (CUP) approval to use an existing three-bedroom home as a vacation rental located at 2035 N Heritage Way. The use as a vacation rental would provide accommodations to families and travelers that want to experience wine country and will be occupied by the owners part time. The applicant has stated that two off-street parking spaces will be available in the driveway with two additional spaces in the garage for use by short-term tenants. The subject property is zoned R-2 (Medium Density Residential). Attachment 1 contains the submitted application.

B. LOCATION: 2035 N Heritage Way



C. SITE INFORMATION:

1. Location: 2035 N Heritage Way
2. Total Lot Size: 5,414 square feet
3. Topography: Slight grade from the backyard to the front
4. Current Land Uses: Single family residential
5. Natural Features: None
6. Adjacent Land Uses:

- a. North: Single-family residential
- b. South: Single-family residential
- c. East: Single-family residential
- d. West: Single-family residential

7. Zoning:

- a. North: R-2 (Medium Density Residential)
- b. South: R-2 (Medium Density Residential)
- c. East: R-2 (Medium Density Residential)
- d. West: R-2 (Medium Density Residential)

8. Access and Transportation: Access to the vacation rental will occur via N Heritage Way. N Heritage Way is classified as a local residential street in the City's Interactive Planning Map. N Heritage Way is a paved road.

9. Utilities:

Water: The City's GIS illustrates an 8-inch water main in N Heritage Way with an existing service lateral to the property.

Wastewater: The City's GIS illustrates an 8-inch wastewater line in N Heritage Way with an existing service lateral to the property.

Stormwater: The City's GIS illustrates a storm collector system drains into the gutter and then into the City's stormwater system.

Overhead Lines: Any new overhead utility connections to the property must be undergrounded. See NMC 15.430.010 for exception provisions.

D. PROCESS: This Conditional Use Permit request is a Type III application and follows the procedures in Newberg Development Code 15.100.050. The Planning Commission will hold a quasi-judicial public hearing on the application. The Commission will make a decision on the application based on the criteria listed in the attached findings. The Planning Commission's decision is final unless appealed. Important dates related to this application are as follows:

2/23/22: The Community Development Director deemed the application

complete.

- 3/7/22: The applicant mailed notice to the property owners within 500 feet of the site.
- 3/23/22: The *Newberg Graphic* published notice of the Planning Commission hearing and notice was posted in four public places.
- 4/4/22: The applicant posted notice on the site.
- 4/14/22: The Planning Commission will hold a quasi-judicial public hearing to consider the application.

E. AGENCY COMMENTS: The application was routed to several public agencies and City departments for review and comment. Comments and recommendations from City departments have been incorporated into the findings and conditions of approval. As of the writing of this report, the City received the following responses from the following referral agencies (Attachment 2):

City Manager: Reviewed, no conflict

ZiPLY: Reviewed, no conflict

Finance: Reviewed, no conflict

Police: Reviewed, no conflict

Public Works Maintenance: Reviewed, no conflict

Public Works Maintenance Superintendent: Reviewed, no conflict

Public Works Director: Reviewed, no conflict

Public Works Maintenance Supervisor: Reviewed, no conflict

Public Works Engineering: Reviewed, no conflict

Building Official: Reviewed, no conflict

F. PUBLIC COMMENTS: As of the writing of this report, the City has received no public comments on the proposal.

G. ANALYSIS: The proposed vacation rental is compatible with the surrounding residential uses and neighborhood due to its size and scope. The characteristics of a vacation rental

are not dissimilar to other rented and owned dwellings. The location of the proposed vacation rental is convenient and attractive for visitors to downtown, George Fox University, and surrounding tourist attractions to Newberg.

The maximum occupancy is regulated by the number of bedrooms – two guests per bedroom. Therefore, the maximum number of guests is six (6) in the house based on the current 3-bedrooms in the home. There are two off-street parking spaces in the driveway for short term guests provided on the subject property.

- H. PRELIMINARY STAFF RECOMMENDATION:** The preliminary staff recommendation is made in the absence of public hearing testimony and may be modified after the close of the public hearing. At the time this report was drafted, staff recommends the following motion:

Move to adopt Planning Commission Order 2022-05, which approves the requested conditional use permit with the attached conditions of approval in Exhibit "B".



PLANNING COMMISSION ORDER 2022-05

**AN ORDER APPROVING CONDITIONAL USE PERMIT CUP22-0003 FOR A
VACATION RENTAL HOME AT 2035 N HERITAGE WAY, YAMHILL
COUNTY TAX LOT R3218DD 05800**

RECITALS

1. Todd and Melissa Nelson applied for a conditional use permit for a vacation rental home at 2035 N Heritage Way, Yamhill County Tax Lot R3218DD 05800.
2. After proper notice, the Newberg Planning Commission held a public hearing on April 14, 2022, to consider the application. The Commission considered testimony and deliberated.
3. The Newberg Planning Commission finds that the application, as conditioned in Exhibit “B”, meets the applicable Newberg Municipal Code criteria as shown in the findings in Exhibit “A”.

The Newberg Planning Commission orders as follows:

1. Conditional Use Permit Application CUP22-0003 is hereby approved, subject to the conditions contained in Exhibit “B”. Exhibit “B” is hereby adopted and by this reference incorporated.
2. The findings shown in Exhibit “A” are hereby adopted. Exhibit “A” is hereby adopted and by this reference incorporated.
3. This order shall be effective on April 28, 2022, unless appealed prior to this date.
4. This order shall expire one year after the effective date above if the applicant does not commence use of the home as a vacation rental unless an extension is granted per Newberg Development Code 15.225.100.

Adopted by the Newberg Planning Commission this 14th day of April 2022.

ATTEST:

Planning Commission Chair

Planning Commission
Secretary

List of Exhibits:

Exhibit “A”: Findings

Exhibit “B”: Conditions of Approval

**Exhibit “A” to Planning Commission Order 2022-05
Findings – File CUP22-0003
Vacation Rental at 2035 N Heritage Way**

A. Conditional Use Permit Criteria That Apply - Newberg Development Code 15.225.060.

- A. *The location, size, design and operating characteristics of the proposed development are such that it can be made reasonably compatible with and have minimal impact on the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the generation of traffic and the capacity of surrounding streets, and to any other relevant impact of the development.***

Finding: The vacation rental would be in an existing three-bedroom, single-family dwelling in a neighborhood northwest of Downtown Newberg. The property owners are planning to use the dwelling as a short-term vacation rental for families, travelers, and to occupy the property part-time. The site landscaping, maintenance, and management will be managed by a property management group (Lifestyle Properties).

The proposed vacation rental use is similar to a regular residential use in design and operating characteristics. The home has three bedrooms so a maximum of six renters would be allowed to occupy the home. Two off-street parking spaces are provided on the property with two more available in the garage. The owner is conditioned to keep at least two off-street parking spaces available for of vacation rental guests. Single-family R-2 zoned properties are located to the north, south, east, and west of the subject property. The subject property is zoned R-2. A vacation rental use is compatible with the surrounding residential neighborhood and would effectively function no differently than the existing residential uses in the surrounding area. This criterion is met.

- B. *The location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping or civic environment, and will be as attractive as the nature of the use and its location and setting warrants.***

Finding: The location of the dwelling is attractive for a vacation rental due to its proximity to downtown Newberg. The downtown area is just over a mile to the south. The home is well maintained and has recent improvements as noted in the application material. A vacation rental is a compatible use with other residential uses because it is similar in size and scope to a long-term rented (longer than 30-days) or owned dwelling. This criterion is met.

- C. *The proposed development will be consistent with this code.***

Finding: The vacation rental standards are addressed in findings below; if the development complies with the standards of NMC Section 15.445.300, the application will be consistent with code requirements.

B. Applicable Criteria - NMC 15.445.300 Vacation Rental Homes

15.445.310 Where allowed.

Vacation rental homes are permitted in areas shown on Chapter 15.305 NMC.

The vacation rental home must be a structure approved for occupancy as a single-family dwelling unit.

Finding: The subject property is zoned R-2. The table below is an excerpt from Chapter 15.305 of the NMC, which states vacation rental homes are permitted as a conditional use in the R-2 zone. The owner has applied for conditional use permit approval for the proposed vacation rental home. The structure was previously approved for occupancy as a single-family dwelling unit.

<u>Use</u>	R-1	R-2	R-3	R-4	RP	C-1	C-2	C-3
<u>Vacation rental home</u>	C	C	C	S	S	S(13)	S(13)	S(13)

This criterion is met.

15.445.320 Registration required.

Prior to use or advertising for use of a dwelling as a vacation rental home, the owner or operator shall register the vacation rental home with the city on forms provided by the director. The registration shall include such information required by the director, including the name and contact information for the owner, operator and a local contact.

Finding: As required by NMC 15.445.320, prior to the use of the home as a vacation rental the owner or applicant will be required to register the vacation rental home with the City and will be required to pay the transient lodging tax. This criterion will be met with the adherence to the aforementioned condition of approval.

15.445.330 Standards.

A. The vacation rental home shall provide a minimum of two parking spaces on the site that are available for use of the rental occupants.

B. The applicant shall provide for regular refuse collection.

C. The vacation rental home may not be occupied by more than two rental occupants per bedroom, up to a maximum of 15 people.

D. The premises of the vacation rental home may not include any occupied recreational vehicle, trailer, tent or temporary shelter during the

rental occupancy.

Finding: The proposed vacation rental would be in an existing three-bedroom single-family dwelling. There are two off-street parking spaces available on the existing driveway and an additional two in the garage. The applicant will be responsible for providing for regular refuse collection and has indicated that service is currently set up with Waste Management. Prior to the use of the home as a vacation rental, the property must be enrolled in regular weekly refuse collection services, in order to comply with this Section of the NMC. The home has three bedrooms; therefore, the maximum number of guests is limited to six (6). Guest contracts shall not allow recreational vehicles, trailers, tents, or temporary shelters during the rental occupancy. The owner is conditioned to keep at least two off-street parking spaces available for use of vacation rental guests. The owner has proposed at least two off-street parking spaces. These criteria are met with the adherence to the aforementioned conditions of approval.

15.445.340 Registration posting.

The applicant shall post the vacation rental home registration within the dwelling adjacent to the front door. At a minimum, the posting will contain the following information:

- A. The name of the operator and a telephone number where the operator may be reached.*
- B. The telephone number for the police department.*
- C. The maximum number of occupants permitted to stay in the dwelling.*
- D. The standards for the rental occupancy.*
- E. The solid waste collection day.*

Finding: The applicant has acknowledged the requirements listed in NMC Section 15.445.340 and has stated that they will comply with these requirements. Prior to the use of the home as a vacation rental and during the use of the home as a vacation rental, the applicant is required to post the required information for NMC 15.445.040(A-E) by the front door of the vacation rental.

Operator Name: Todd and Melissa Nelson

Phone Number: (480) 250-6307

In the event of an emergency, call: 911 | Non-Emergency Police #: (503) 538-8321

Max Number of Guests: six (6)

Trash Pick-Up Day: Monday

City of Newberg Vacation Rental Standards:

- Each vacation rental home shall provide a minimum of two parking spaces on the site that are available for use of the rental occupants.
- The applicant shall provide for regular refuse collection.
- The vacation rental home may not be occupied by more than two rental occupants per bedroom, up to a maximum of 6 people.

- The premises of the vacation rental home may not include any occupied recreational vehicle, trailer, tent, or temporary shelter during the rental occupancy.

The requirements of Section 15.445.040 will be met with the adherence to the aforementioned conditions of approval.

15.445.350 Complaints and revocation of registration.

If the city receives two or more written complaints within a one-year period regarding a vacation rental home occupancy, and the issues have not been resolved through the code enforcement officer, the city manager may schedule a hearing to consider revoking the vacation rental home registration. The hearing may be conducted by the city manager, or other such hearings officer as the city manager may appoint for this purpose. The city manager shall notify the owner and operator of the hearing, those submitting written complaints, and may invite others to submit testimony at the hearing. After hearing the facts, the city manager may do any of the following:

- A. Revoke the registration for noncompliance with the standards in this section. If this permit is revoked, the premises may not be used as a vacation rental home for a period of two years, or a period of lesser time as determined by the hearings officer.***
- B. Impose additional conditions necessary to fulfill the purpose of this section.***
- C. Establish a probationary period to monitor compliance.***
- D. Dismiss the complaint.***
- E. Refer the matter to the code enforcement officer for citation in municipal court or other appropriate jurisdiction.***

The hearings officer's decision may be appealed to the planning commission by the applicant, owner, or person filing the written complaint within 14 calendar days of the date of the decision in the manner provided in NMC 15.100.170.

Finding: The City will follow the procedures listed above in the event complaints are received about the vacation rental home. The applicant's narrative acknowledges Section 15.445.050 complaints and revocation of registration. The applicants have indicated they understand the potential for an approval to be revoked if the requirements for operating a vacation rental are not adhered to.

C. CONCLUSION:

Based on the above-mentioned findings, the application meets the required criteria within the Newberg Municipal Code, subject to completion of and adherence to the attached conditions of approval in Exhibit "B".

**Exhibit “B” to Planning Commission Order 2022-05
Conditions of Approval – File CUP22-0003
Vacation Rental Home at 2035 N Heritage Way**

THE FOLLOWING MUST BE ACCOMPLISHED PRIOR TO USE AS A VACATION RENTAL AND ADHERED TO IN ORDER TO CONTINUE THE USE OF A VACATION RENTAL:

1. **Transient Lodging Tax:** Prior to the use of the home as a vacation rental the owner or applicant will be required to register the vacation rental home with the City of Newberg and will be required to pay the transient lodging tax.
2. **Refuse Collection:** Prior to the use of the home as a vacation rental, the property must be enrolled in regular weekly refuse collection services.
3. **Parking:** The owner is conditioned to keep at two least off-street parking spaces available for use of vacation rental guests.
4. **Posting:** Prior to the use of the home as a vacation rental and during the use of the home as a vacation rental, the applicant is required to post the required information for NMC 15.445.040(A-E) by the front door of the vacation rental.

Operator Name: Todd and Melissa Nelson

Phone Number: (480) 250-6307

In the event of an emergency, call: 911 | Non-Emergency Police #: (503) 538-8321

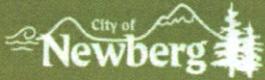
Max Number of Guests: Six (6)

Trash Pick-Up Day: Monday

City of Newberg Vacation Rental Standards:

- Each vacation rental home shall provide a minimum of two parking spaces on the site that are available for use of the rental occupants.
- The applicant shall provide for regular refuse collection.
- The vacation rental home may not be occupied by more than two rental occupants per bedroom, up to a maximum of 6 people.
- The premises of the vacation rental home may not include any occupied recreational vehicle, trailer, tent, or temporary shelter during the rental occupancy.

Attachment 1: Application



TYPE III APPLICATION (QUASI-JUDICIAL REVIEW)

File #: CUP22-0003

TYPES – PLEASE CHECK ONE:

- Annexation
- Comprehensive Plan Amendment (site specific)
- Zoning Amendment (site specific)
- Historic Landmark Modification/alteration
- Conditional Use Permit
- Type III Major Modification
- Planned Unit Development
- Other: (Explain) _____

APPLICANT INFORMATION:

APPLICANT: Todd and Melissa Nelson
 ADDRESS: 2035 N Heritage Way Newberg, OR 97132
 EMAIL ADDRESS: tjn76@live.com
 PHONE: _____ MOBILE: 480-250-6307 FAX: _____
 OWNER (if different from above): SAA PHONE: _____
 ADDRESS: 765 N Tatum Ln Gilbert, AZ 85234
 ENGINEER/SURVEYOR: _____ PHONE: _____
 ADDRESS: _____

GENERAL INFORMATION:

PROJECT NAME: Short term Rental PROJECT LOCATION: 2035 N Heritage Way Newberg, OR
 PROJECT DESCRIPTION/USE: Short Term Rental
 MAP/TAX LOT NO. (i.e. 3200AB-400): R3218AB-01211 ZONE: R2 SITE SIZE: 5414 SQ. FT. ACRE
 COMP PLAN DESIGNATION: _____ TOPOGRAPHY: _____
 CURRENT USE: _____
 SURROUNDING USES:
 NORTH: SFR SOUTH: SFR
 EAST: SFR WEST: SFR

SPECIFIC PROJECT CRITERIA AND REQUIREMENTS ARE ATTACHED

General Checklist: Fees Public Notice Information Current Title Report Written Criteria Response Owner Signature

For detailed checklists, applicable criteria for the written criteria response, and number of copies per application type, turn to:

Annexationp. 15
Comprehensive Plan / Zoning Map Amendment (site specific)p. 19
Conditional Use Permitp. 21
Historic Landmark Modification/Alterationp. 23
Planned Unit Developmentp.26

The above statements and information herein contained are in all respects true, complete, and correct to the best of my knowledge and belief. Tentative plans must substantially conform to all standards, regulations, and procedures officially adopted by the City of Newberg. All owners must sign the application or submit letters of consent. Incomplete or missing information may delay the approval process.

Todd Nelson Digitally signed by Todd Nelson
Date: 2022.01.11 20:19:34 -0700

 Applicant Signature Date

Melissa Nelson Digitally signed by Melissa Nelson
Date: 2022.01.18 15:40:19 -0700

 Owner Signature Date

Todd Nelson

Print Name

Melissa Nelson

Print Name

GENERAL INFORMATION

Type III Development Permit Process (Quasi-Judicial Hearing)

Overview: Type III Permit applications are reviewed by the Planning Commission and include a mix of objective and subjective standards. Public notice is provided to property owners within 500 ft of the site. Any interested party may appear before the Planning Commission and comment on the project. The applicant or anyone commenting at the hearing may appeal the decision to the City Council. Some Type III decisions automatically proceed to the City Council with a recommendation by the Planning Commission. Type III decisions must be issued within 120 days of an application being determined complete.

Type III Permits Include:

- Annexations*
- Comprehensive Plan and Zoning Map Amendments – site specific*
- Conditional Use Permits
- Historic Landmark Reviews
- Planned Unit Developments
- Subdivisions not meeting the criteria in Newberg Development Code (NDC) §15.100.040(A), or proposed for Type III review by the applicant, or converted from a Type II to a Type III process.

Pre-Application Conference:

Please call to schedule a time for a pre-application meeting (**required on Type III applications**) prior to submitting an application. The Development Review Meetings are held every Wednesday. This meeting provides the opportunity to get advance information from Planning, Engineering and Building divisions all at once. It is likely to save you time and effort later. The non-refundable pre-application conference fee is \$105.00, payable prior to the conference.

Submit Application

- Pay fees
- Complete application form(s)
- Submit plans and other required information

Processing

- Staff will perform a completeness check of the application and notify applicant of any information that is missing or incomplete. Processing time 0 to 30 days.
- Staff will route the application to affected agencies and City departments Processing time 14 to 20 days
- Applicant will provide copies of mailed and posted notices to the City for review, mail the approved notice to property owners within 500 ft. of the site, post the site, and provide staff with an affidavit verifying that the notice was mailed and posted. Processing time 14 to 20 days
- Staff will prepare a written report for review by the Planning Commission. A copy will be available for review seven (7) days prior to the hearing. A copy will be mailed to the applicant seven prior to the hearing.

Planning Commission Hearing

- At the Planning Commission Hearing, the applicant and all interested parties are encouraged to testify. Testimony may be given orally or in writing.
- After public testimony, the Planning Commission may approve, deny, table, make a recommendation to the City Council or continue the item. If the decision is final at the Planning Commission, then proceed to Appeals. Planning Commission decisions become effective upon completion of the 14 day appeal period.

City Council Hearing

- If the decision is a recommendation from the Planning Commission that requires adoption of an ordinance, then a new public hearing will be held at the City Council. At the City Council hearing, the applicant and all interested parties are encouraged to testify. Testimony may be given orally or in writing. After public testimony, the City Council may approve, deny, table, or continue the item.

Appeals

- If the applicant, or other parties providing written testimony prior to or at the hearing, or parties providing oral testimony at the hearing; are dissatisfied with the decision of the Planning Commission, they may file an appeal within 14 calendar days of the issuance of the decision. Appeals of Type III decisions proceed to the City Council for a hearing on the record. City Council decisions may only be appealed to the Land Use Board of Appeals.

Permits

- Once a final decision has been made, the applicant may proceed or submit other permits, if necessary (i.e.: design review, building permits, subdivision approval, etc.). For applications involving more than one application type, the permits may be processed individually under each procedure or under the highest procedure number that applies.
-

Helpful Hints:

- **Questions?** Information is free! Please do not hesitate to call (503) 537-1240 prior to submitting the application.
- **Partial Applications:** Please do not submit partial applications. If the application, plans, and fee are not submitted together; processing will be delayed and the application may not be accepted for review.
- **Face-to-Face:** It is best to submit an application in person. That way you can receive immediate feedback if there's missing information or suggestions for improvements.

NEWBERG PERMIT CENTER FEE SCHEDULE Effective Date: April 1, 2021

5% Technology fee will be added to total fees (resolution No. 2016-3268)

PRE-APPLICATION REVIEW	\$100
TYPE I (ADMINISTRATIVE REVIEW)	
ANY TYPE I ACTION NOT SPECIFICALLY LISTED IN THIS SECTION	\$182
PROPERTY CONSOLIDATION	\$182
CODE ADJUSTMENT	\$455
DESIGN REVIEW - TYPE I (DUPLX OR COM. /IND. MINOR ADDITION REVIEW)	0.3% OF PROJECT VALUE, \$455 MINIMUM
MINOR MODIFICATION OR EXTENSION OF TYPE I DECISION	\$182
MAJOR MODIFICATION OF TYPE I DECISION	50% OF ORIGINAL FEE
PARTITION FINAL PLAT	\$913 + \$80 PER PARCEL
PROPERTY LINE ADJUSTMENT	\$913
SIGN REVIEW	\$10 PLUS \$1.00 PER SQ. FT. OF SIGN FACE
SUBDIVISION, PUD, OR CONDOMINIUM FINAL PLAT	\$1830 + \$80 PER LOT OR UNIT
TYPE II (LAND USE DECISION)	
ANY TYPE II ACTION NOT SPECIFICALLY LISTED IN THIS SECTION	\$913
MINOR MODIFICATION OR EXTENSION OF TYPE II DECISION	\$182
MAJOR MODIFICATION OF TYPE II DECISION	50% OF ORIGINAL FEE
DESIGN REVIEW (INCLUDING MOBILE/MANUFACTURED HOME PARKS)	0.6% OF TOTAL PROJECT COST, \$913 MINIMUM*
PARTITION PRELIMINARY PLAT	\$913 PLUS \$80 PER PARCEL
SUBDIVISION PRELIMINARY PLAT	\$1830 PLUS \$80 PER LOT
VARIANCE	\$913
TYPE III (QUASI-JUDICIAL REVIEW)	
ANY TYPE III ACTION NOT SPECIFICALLY LISTED IN THIS SECTION	\$1939
ANNEXATION	\$2549 PLUS \$244 PER ACRE
COMPREHENSIVE PLAN AMENDMENT (SITE SPECIFIC)	\$2389
CONDITIONAL USE PERMIT	\$1939
MINOR MODIFICATION OR EXTENSION OF TYPE III DECISION	\$182
MAJOR MODIFICATION OF TYPE III DECISION	50% OF ORIGINAL FEE
HISTORIC LANDMARK ESTABLISHMENT OR MODIFICATION	\$0
HISTORIC LANDMARK ELIMINATION	\$223
SUBDIVISION PRELIMINARY PLAT	\$1830 PLUS \$80 PER LOT
PLANNED UNIT DEVELOPMENT	\$3872+\$80 PER LOT OR UNIT
ZONING AMENDMENT (SITE SPECIFIC)	\$2415
TYPE IV (LEGISLATIVE AMENDMENTS)	
COMPREHENSIVE PLAN TEXT AMENDMENT OR LARGE SCALE MAP REVISION	\$2747
DEVELOPMENT CODE TEXT AMENDMENT OR LARGE SCALE MAP REVISION	\$2747
APPEALS	
TYPE I OR II APPEAL TO PLANNING COMMISSION	\$524
TYPE I OR II APPEAL TO CITY COUNCIL	\$950
TYPE III APPEAL TO CITY COUNCIL	\$1115
TYPE I ADJUSTMENTS OR TYPE II VARIANCES (THAT ARE NOT DESIGNED TO REGULATE THE PHYSICAL CHARACTERISTICS OF A USE PERMITTED OUTRIGHT)	\$294
EXHIBITOR LICENSE FEE APPEAL TO THE CITY COUNCIL	50% OF EXHIBITOR LICENSE FEE
OTHER FEES	
TECHNOLOGY FEE (This fee will be added to all Planning, Engineering and Building Fees, does not apply to SDC fees) 5% OF TOTAL EXPEDITED LAND DIVISION	\$6803 + \$80 PER LOT OR UNIT
URBAN GROWTH BOUNDARY AMENDMENT	\$4348
VACATION OF PUBLIC RIGHT-OF-WAY	\$1804
FEE-IN-LIEU OF PARKING PROGRAM	\$13,780 PER VEHICLE SPACE
BIKE RACK COST SHARING PROGRAM	\$100 PER RACK
LICENSE FEES	
GENERAL BUSINESS	\$50
HOME OCCUPATION	\$25
PEDDLER/SOLICITOR/STREET VENDOR	No fee (Business License fee only)
EXHIBITOR	\$134
TEMPORARY MERCHANT	\$109/45 days or \$361/perpetual

ADDITIONAL LAND USE REVIEW FEES - ENGINEERING DEPARTMENT	
Planning Review, Partition, Subdivision & PUD's (Type 11/111 Application) -	\$296.71 - 19 lots, Plus \$13.90 per lot over 19 lots
Final Plat Review, Partition and subdivision	\$296.71 Plus\$7.45 per lot or parcel
Development review for public improvements on Commercial, Industrial, Multifamily Developments & Institutional zones	\$414.95 1st Acre \$237.02 Additional acre

ADOPTION AND REVISION HISTORY:
 Adopted by: Resolution 98-2122, July 6, 1998
 Amended by: Resolution 99-2214, December 8, 1999
 Resolution 2000-2265, October 2, 2000
 Resolution 2001-2318, November 19, 2001
 Executive Order January 2, 2007 (Reso. 99-2210)
 Executive Order October 24, 2008
 Executive Order, December 16, 2002 pursuant to Resolution 99-2210

Executive Order, January 22, 2002 pursuant to Resolution 99-2210
 Resolution 2004-2466, November 3, 2003
 Resolution 2007-2752, December 3, 2007
 Executive Order November 29, 2011(2011-32)
 Executive Order October 24, 2012(2012-34)
 Resolution 2014-3140, May 19, 2014
 Executive Order April 1, 2015 (2015-42)
 Resolution 2016-3268, April 18, 2016

Resolution 2017-3361 March 2017
 Resolution 2019-3443 March 2018
 Resolution 2019-3539 March 2019
 Resolution 2020-3646 March 2020
 Resolution 2021-3722 March 2021

§ 15.225.060 - TYPE III CONDITIONAL USE PERMIT CRITERIA

It is recognized that certain types of uses require special consideration prior to their being permitted in a particular district. The reasons for requiring such special consideration involves, among other things, the size of the area required for the full development of such uses, the nature of the traffic problems incidental to operation of the use, the effect such uses have on any adjoining land uses and on the growth and development of the community as a whole.

All uses permitted conditionally are declared to be possessing such unique and special characteristics as to make impractical their being included as out-right uses in any of the various districts herein defined. The authority for the location and operation thereof shall be subject to review and the issuance of a conditional use permit. The purpose of review shall be to determine that the characteristics of any such use shall be reasonably compatible with the types of uses permitted in surrounding areas, and for the further purpose of stipulating such conditions as may be reasonable so that the basic purposes of this code shall be served. Nothing construed herein shall be deemed to require the hearing body to grant a conditional use permit.

Conditional Uses Permitted in Any Zoning District (with an approved conditional use permit application):

- (A) Airports and landing fields.
- (B) Amusement parks.
- (C) Carnivals and circuses, if established for more than two weeks, except those in conjunction with a county fair or other outdoor governmentally sponsored event.
- (D) Cemeteries.
- (E) Facilities for the care and/or lodging of alcoholics, except publicly or privately operated rehabilitation centers providing clinical supervision, care and intensive treatment to persons with alcohol and/or chemical dependency problems.
- (F) Garbage dumps, sanitary land fills. Solid waste collection facility when under franchise by the city. This conditional use would include temporary storage and transfer of recyclable solid waste, supply storage, vehicle and equipment storage, service or repair and related accessory uses including disposal or landfill sites.
- (G) Heliports and helistops.
- (H) Jails or penal farms.
- (I) Mental hospitals.
- (J) Pound, dog or cat, (kennel).
- (K) Race tracks, including drag strips and go-cart tracks.
- (L) Sewage treatment plants.
- (M) Home occupations with more than one outside paid employee working at the residence at any given time.
- (N) Modifications to public street standards for the purpose of ingress and egress to a minimum of three and not more than six lots.

Provide a written response that specifies how your project meets the following criteria:

- (A) The location, size, design and operating characteristics of the proposed development are such that it can be made reasonably compatible with and have minimal impact on the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the generation of traffic and the capacity of surrounding streets, and to any other relevant impact of the development.
- (B) The location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping or civic environment, and will be as attractive as the nature of the use and its location and setting warrants. The proposed development will be consistent with this code.
- (C) The proposed development will be consistent with this code.

CONDITIONAL USE PERMIT CHECKLIST

The following items must be submitted with each application. Incomplete applications will not be processed. Incomplete or missing information may delay the review process. Check with the Planning Division regarding additional requirements for your project.

FEES

PUBLIC NOTICE INFORMATION – Draft of mailer notice and sign; mailing list of all properties within 500’.

CURRENT TITLE REPORT (within 60 days old)

Submit one original 8 ½" x 11" or 11" x 17" reproducible document together with 10 copies of the following information. In addition, submit two (2) full size copies of all plans.

WRITTEN CRITERIA RESPONSE – Address the criteria listed on page 21.

PROJECT STATEMENT – Provide a written statement that addresses the operational data for the project, including hours of operation, number of employees, traffic information, odor impacts, and noise impacts.

SITE DEVELOPMENT PLAN. Make sure the plans are prepared so that they are at least 8 ½ x 11 inches in size and the scale is standard, being 10, 20, 30, 40, 50, 100 or multiples of 100 to the inch (such as 1":10', 1":20' or other multiples of 10). Include the following information in the plan set (information may be shown on multiple pages):

Existing Site Features: Show existing landscaping, grades, slopes and structures on the site and for areas within 100' of the site. Indicate items to be preserved and removed.

Drainage & Grading: Show the direction and location of on and off-site drainage on the plans. This shall include site drainage, parking lot drainage, size and location of storm drain lines, and any retention or detention facilities necessary for the project. Provide an engineered grading plan if necessary.

Utilities: Show the location of and access to all public and private utilities, including sewer, water, storm water and any overhead utilities.

Public Improvements: Indicate any public improvements that will be constructed as part of the project, including sidewalks, roadways, and utilities.

Access, Parking, and Circulation: Show proposed vehicular and pedestrian circulation, parking spaces, parking aisles, and the location and number of access points from adjacent streets. Provide dimensions for parking aisles, back-up areas, and other items as appropriate. Indicate where required bicycle parking will be provided on the site along with the dimensions of the parking spaces.

Site Features: Indicate the location and design of all on-site buildings and other facilities such as mail delivery, trash disposal, above ground utilities, loading areas, and outdoor recreation areas. Include appropriate buffering and screening as required by the code.

Exterior Lighting Plan: Show all exterior lighting, including the direction of the lighting, size and type of fixtures, and an indication of the amount of lighting using foot candles for analysis.

Landscape Plan: Include a comprehensive plan that indicates the size, species and locations of all planned landscaping for the site. The landscape plan should have a legend that indicates the common and botanical names of plants, quantity and spacing, size (caliper, height, or container size), planned landscaping materials, and description of the irrigation system. Include a calculation of the percentage of landscaped area.

ADA Plan Compliance: Indicate compliance with any applicable ADA provisions.

Architectural Drawings: Provide floor plans and elevations for all planned structures.

Signs and Graphics: Show the location, size, colors, materials, and lighting of all exterior signs, graphics or other informational or directional features if applicable.

Other: Show any other site elements which will assist in the evaluation of the site and the project.

TRAFFIC STUDY. A traffic study shall be submitted for any project that generates in excess of forty (40) trips per p.m. peak hour. This requirement may be waived by the Director when a determination is made that a previous traffic study adequately addresses the proposal and/or when off-site and frontage improvements have already been completed which adequately mitigate any traffic impacts and/or the proposed use is not in a location which is adjacent to an intersection which is functioning at a poor level of service. A traffic study may be required by the Director for projects below forty (40) trips per p.m. peak hour where the use is located immediately adjacent to an intersection functioning at a poor level of service.



First American

First American Title Insurance Company

775 NE Evans Street
McMinnville, OR 97128
Phn - (503)376-7363
Fax - (866)800-7294

Order No.: 1032-3883905
January 13, 2022

FOR QUESTIONS REGARDING YOUR CLOSING, PLEASE CONTACT:

KEELEY DRISCOLL, Escrow Officer/Closer
Phone: (503)538-7361 - Fax: (866)800-7290 - Email: kdriscoll@firstam.com
First American Title Insurance Company
515 E Hancock, Newberg, OR 97132

FOR ALL QUESTIONS REGARDING THIS PRELIMINARY REPORT, PLEASE CONTACT:

Clayton Carter, Title Officer
Phone: (503)376-7363 - Fax: (866)800-7294 - Email: ctcarter@firstam.com

Preliminary Title Report

This report is for the exclusive use of the parties herein shown and is preliminary to the issuance of a title insurance policy and shall become void unless a policy is issued, and the full premium paid.

Please be advised that any provision contained in this document, or in a document that is attached, linked or referenced in this document, that under applicable law illegally discriminates against a class of individuals based upon personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or any other legally protected class, is illegal and unenforceable by law.

County Tax Roll Situs Address: 2035 N Heritage Way, Newberg, OR 97132

2006 ALTA Owners Standard Coverage	Liability \$	605,000.00	Premium \$	1,131.00 STR
2006 ALTA Owners Extended Coverage	Liability \$		Premium \$	
2006 ALTA Lenders Standard Coverage	Liability \$		Premium \$	
2006 ALTA Lenders Extended Coverage	Liability \$		Premium \$	
Endorsement 9.10, 22 & 8.1			Premium \$	
Govt Service Charge			Cost \$	25.00
Other			Cost \$	

We are prepared to issue Title Insurance Policy or Policies of First American Title Insurance Company, a Nebraska Corporation in the form and amount shown above, insuring title to the following described land:

The land referred to in this report is described in Exhibit A attached hereto.

and as of January 07, 2022 at 8:00 a.m., title to the fee simple estate is vested in:

Joshua W. Perdue and Miklyn K. Perdue, as tenants by the entirety

Subject to the exceptions, exclusions, and stipulations which are ordinarily part of such Policy form and the following:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings

by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

2. Facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, not shown by the public records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject land onto adjoining land or of existing improvements located on adjoining land onto the subject land), encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the subject land.
5. Any lien, or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the public records.

The exceptions to coverage 1-5 inclusive as set forth above will remain on any subsequently issued Standard Coverage Title Insurance Policy.

In order to remove these exceptions to coverage in the issuance of an Extended Coverage Policy the following items are required to be furnished to the Company; additional exceptions to coverage may be added upon review of such information:

- A. Survey or alternative acceptable to the company
- B. Affidavit regarding possession
- C. Proof that there is no new construction or remodeling of any improvement located on the premises. In the event of new construction or remodeling the following is required:
 - i. Satisfactory evidence that no construction liens will be filed; or
 - ii. Adequate security to protect against actual or potential construction liens;
 - iii. Payment of additional premiums as required by the Industry Rate Filing approved by the Insurance Division of the State of Oregon
6. Water rights, claims to water or title to water, whether or not such rights are a matter of public record.
7. City liens, if any, of the City of Newberg.

Note: There are no liens as of January 11, 2022. All outstanding utility and user fees are not liens and therefore are excluded from coverage.
8. The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads and highways.
9. Easement for public utilities as shown on the plat of Madison's Garden.
10. Covenant of Waiver of Rights and Remedies, including terms and provisions thereof.
Recorded: November 30 2005, Instrument No. 200526991, Deed and Mortgage Records
11. Covenant of Waiver of Rights and Remedies, including terms and provisions thereof.
Recorded: November 30, 2005, Instrument No. 200526995, Deed and Mortgage Records

12. Covenants, conditions, restrictions and/or easements; but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, family status, or national origin to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes:
Recording Information: August 10, 2007, Instrument No. 200717901, Deed and Mortgage Records
13. Subdivision Compliance Agreement and the terms and conditions thereof:
Between: Coyote Homes, Inc.
And: City of Newberg
Recording Information: August 10, 2007, Instrument No. 200717902, Deed and Mortgage Records
14. Easement, including terms and provisions contained therein:
Recording Information: August 10, 2007, Instrument No. 200717903, Deed and Mortgage Records
In Favor of: City of Newberg
For: Emergency vehicle and waste disposal vehicle turnaround
15. Deed of Trust and the terms and conditions thereof.
Grantor/Trustor: Joshua W Perdue and Miklyn K Perdue, as tenants by the entirety
Grantee/Beneficiary: First Technology Federal Credit Union
Trustee: Brad L Williams
Amount: \$290,500.00
Recorded: November 30, 2020
Recording Information: Instrument No. 202021477, Deed and Mortgage Records

- END OF EXCEPTIONS -

NOTE: According to the public record, the following deed(s) affecting the property herein described have been recorded within 24 months of the effective date of this report: NONE

NOTE: Taxes for the year 2021-2022 PAID IN FULL

Tax Amount: \$4,330.53
Map No.: R3218AB 01211
Property ID: 540421
Tax Code No.: 29.0

Situs Address as disclosed on Yamhill County Tax Roll:

2035 N Heritage Way, Newberg, OR 97132

**THANK YOU FOR CHOOSING FIRST AMERICAN TITLE!
WE KNOW YOU HAVE A CHOICE!**

RECORDING INFORMATION

Filing Address: **Yamhill County**
777 Commercial Street SE, Suite 100
Salem, OR 97301

Recording Fees: \$ **81.00** for the first page
\$ **5.00** for each additional page

cc: Todd J. Nelson and Melissa D. Nelson
cc: Joshua W. Perdue and Miklyn K. Perdue
cc: Laura Oviatt, Berkshire Hathaway HomeServices Northwest Real Estate
2501 Portland Road, Newberg, OR 97132
cc: Amanda Recker, Oregon First
6600 Southwest 92nd Avenue Suite 200, Portland, OR 97223

Exhibit "A"

Real property in the County of Yamhill, State of Oregon, described as follows:

LOT 12, MADISON'S GARDEN, IN THE CITY OF NEWBERG, YAMHILL COUNTY, OREGON.



First American Title Insurance Company

SCHEDULE OF EXCLUSIONS FROM COVERAGE

ALTA LOAN POLICY (06/17/06)

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

ALTA OWNER'S POLICY (06/17/06)

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

SCHEDULE OF STANDARD EXCEPTIONS

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, not shown by the public records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject land onto adjoining land or of existing improvements located on adjoining land onto the subject land), encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the subject land.
5. Any lien^o or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the public records.

NOTE: A SPECIMEN COPY OF THE POLICY FORM (OR FORMS) WILL BE FURNISHED UPON REQUEST

TI 149 Rev. 7-22-08



Privacy Notice

Effective: October 1, 2019

Notice Last Updated: January 1, 2021

This Privacy Notice describes how First American Financial Corporation and its subsidiaries and affiliates (together referred to as "First American," "we," "us," or "our") collect, use, store, and share your information. This Privacy Notice applies to information we receive from you offline only, as well as from third parties, when you interact with us and/or use and access our services and products ("Products"). For more information about our privacy practices, including our online practices, please visit <https://www.firstam.com/privacy-policy/>. The practices described in this Privacy Notice are subject to applicable laws in the places in which we operate.

What Type Of Information Do We Collect About You? We collect a variety of categories of information about you. To learn more about the categories of information we collect, please visit <https://www.firstam.com/privacy-policy/>.

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Contact Us dataprivacy@firstam.com or toll free at 1-866-718-0097.



For California Residents

If you are a California resident, you may have certain rights under California law, including but not limited to the California Consumer Privacy Act of 2018 ("CCPA"). All phrases used in this section shall have the same meaning as those phrases are used under California law, including the CCPA.

Right to Know. You have a right to request that we disclose the following information to you: (1) the categories of **personal information** we have collected about or from you; (2) the categories of sources from which the **personal information** was collected; (3) the business or commercial purpose for such collection and/or disclosure; (4) the categories of third parties with whom we have shared your **personal information**; and (5) the specific pieces of your **personal information** we have collected. To submit a verified request for this information, go to our online privacy policy at www.firstam.com/privacy-policy to submit your request or call toll-free at 1-866-718-0097. You may also designate an authorized agent to submit a request on your behalf by going to our online privacy policy at www.firstam.com/privacy-policy to submit your request or by calling toll-free at 1-866-718-0097.

Right of Deletion. You also have a right to request that we delete the **personal information** we have collected from and about you. This right is subject to certain exceptions available under the CCPA and other applicable law. To submit a verified request for deletion, go to our online privacy policy at www.firstam.com/privacy-policy to submit your request or call toll-free at 1-866-718-0097. You may also designate an authorized agent to submit a request on your behalf by going to our online privacy policy at www.firstam.com/privacy-policy to submit your request or by calling toll-free at 1-866-718-0097.

Verification Process. For either a request to know or delete, we will verify your identity before responding to your request. To verify your identity, we will generally match the identifying information provided in your request with the information we have on file about you. Depending on the sensitivity of the information requested, we may also utilize more stringent verification methods to verify your identity, including but not limited to requesting additional information from you and/or requiring you to sign a declaration under penalty of perjury.

Notice of Sale. We do not sell California resident information, nor have we sold California resident information in the past 12 months. We have no actual knowledge of selling the information of minors under the age of 16.

Right of Non-Discrimination. You have a right to exercise your rights under California law, including under the CCPA, without suffering discrimination. Accordingly, First American will not discriminate against you in any way if you choose to exercise your rights under the CCPA.

Notice of Collection. To learn more about the categories of **personal information** we have collected about California residents over the last 12 months, please see "What Information Do We Collect About You" in <https://www.firstam.com/privacy-policy>. To learn about the sources from which we have collected that information, the business and commercial purpose for its collection, and the categories of third parties with whom we have shared that information, please see "How Do We Collect Your Information", "How Do We Use Your Information", and "How Do We Share Your Information" in <https://www.firstam.com/privacy-policy>.

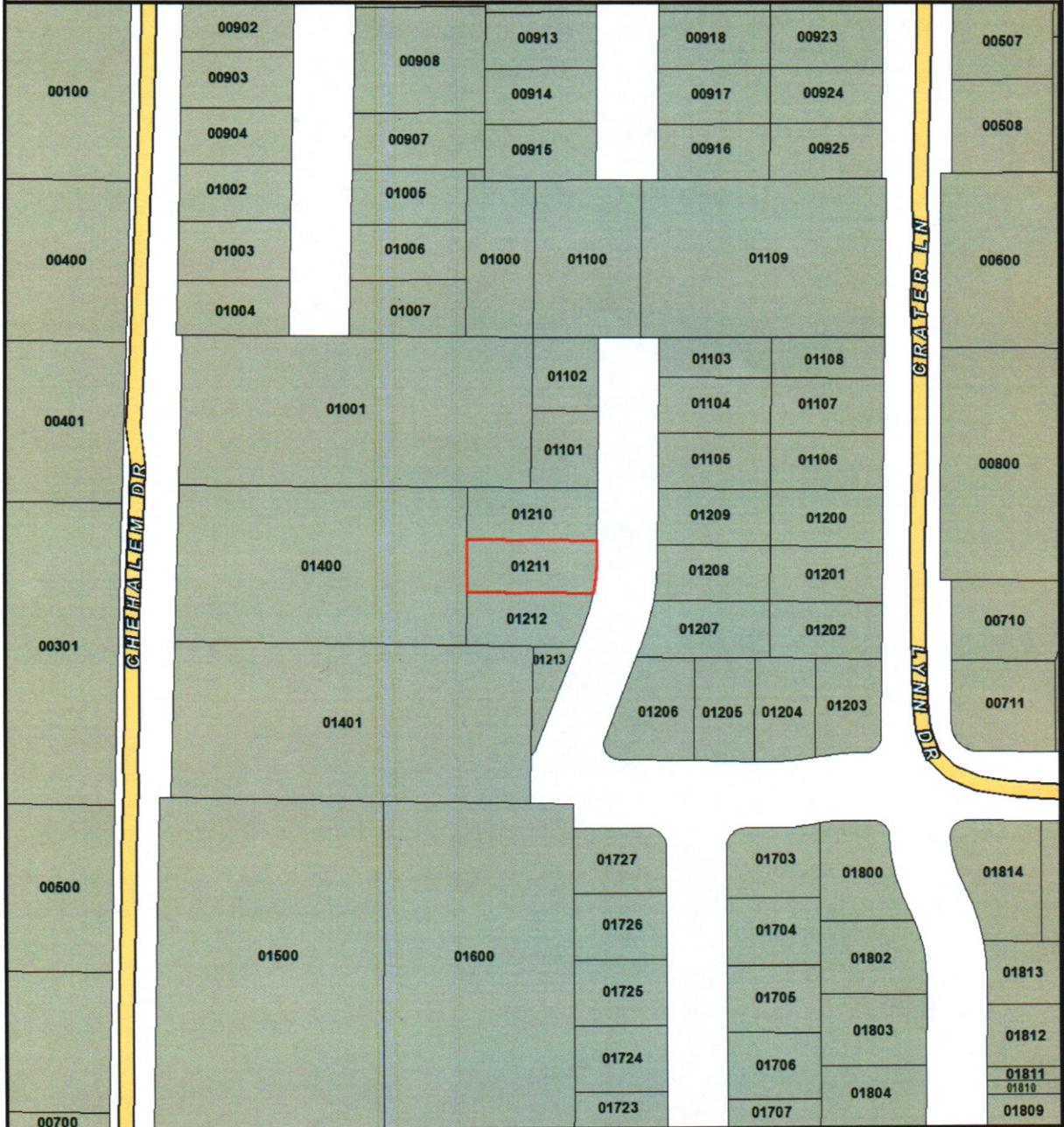
Notice of Sale. We have not sold the **personal information** of California residents in the past 12 months.

Notice of Disclosure. To learn more about the categories of **personal information** we may have disclosed about California residents in the past 12 months, please see "How Do We Use Your Information" and "How Do We Share Your Information" in <https://www.firstam.com/privacy-policy>.



First American Title

R3218AB 01211
2035 N Heritage Way
Newberg, OR 97132



Taxlot



Subject



Taxlot

1/11/2022

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After recording return to:
Todd J. Nelson and Melissa D. Nelson
765 North Tatum Lane
Gilbert, AZ 85234

Until a change is requested all tax
statements shall be sent to the
following address:
Todd J. Nelson and Melissa D. Nelson
765 North Tatum Lane
Gilbert, AZ 85234

File No.: 1032-3883905 (kd)
Date: January 11, 2022

THIS SPACE RESERVED FOR RECORDER'S USE

Yamhill County Official Records	202201824
DMR-DDMR	02/04/2022 09:33:00 AM
Str=3 SUTTONS	
2Pgs \$10.00 \$11.00 \$5.00 \$60.00	\$86.00
<small>I, Brian Van Bergen, County Clerk for Yamhill County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.</small>	
<small>Brian Van Bergen - County Clerk</small>	

FIRST AMERICAN 3883905

STATUTORY WARRANTY DEED

Joshua W. Perdue and Miklyn K. Perdue, as tenants by the entirety, Grantor, conveys and warrants to **Todd J. Nelson and Melissa D. Nelson as tenants by the entirety**, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

LEGAL DESCRIPTION: Real property in the County of Yamhill, State of Oregon, described as follows:

LOT 12, MADISON'S GARDEN, IN THE CITY OF NEWBERG, YAMHILL COUNTY, OREGON.

Subject to:

1. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration for this conveyance is **\$605,000.00**. (Here comply with requirements of ORS 93.030)

2035 N Heritage Way

Newberg, OR 97132

City of Newberg Conditional Use Permit

Written Criteria Response:

City of Newberg Municipal Code 15.225.06

- A. Proposed use will be a short-term vacation rental while owners are not in the residence.
 - The proposed STR is a SFR that was built in 2011.
 - The house is a 2-story, 3-bedroom, 3-bathroom SFR on a 5414 sq/ft lot. It has a direct neighbor to the north and south.
 - The property will be occupied by the owners part-time. When the owners are not in the home it is planned to be used as a STR property. The STR will be managed by a qualified short-term property management group (Lifestyle Properties) that will provide a professional screening process and 24-hour assistance during STR occupation. There will be no loud noise outdoors after 10pm. There will be an animal policy that will include a requirement that dogs may not be left outside unattended.
 - The property has a 2-car garage and a 2-car driveway.
- B. The location, design, and site of this proposed STR will provide functional accommodations to families and travelers that want to experience the loveliness of Oregon wine country. The STR is not expected to generate any more traffic than long-term residents as it will not be occupied as much.
- C. The proposed STR use will be consistent with Ord. 2451, 12-2-96. Code 2001 & 151.210.

City of Newberg Municipal code 15.445.300 - 15.445.350

15.445.300-Application and purpose

2035 N Heritage Way is a Single-family home that will be available, advertised, or listed by the agent as available for use, rent for occupancy for periods of less than 30 days.

15-445-310- Where allowed

This home is zoned R-2 for use as a vacation rental with a conditional permit.

15-445-320- Standards.

- A. Provide a minimum of 2 parking spaces: There are 2 full-size spaces in the garage as well as 2 full-size spaces in the driveway.

- B. Provide regular refuse pick up: There is a service currently set up with waste management for trash, recycle and yard debris.
- C. Occupancy: The STR has 3 conforming bedrooms so the occupancy limit is expected to be set at 6 people.
- D. Premises: This STR will not allow the use of occupied recreational vehicles, trailers, tent or temporary shelter during rental occupancy.

15.445.340- Registration Postings

This STR will have a vacation rental home registration adjacent to the front door with the following information:

- A. The name of the operator and telephone number where the operator may be reached.
- B. The telephone number of the police department.
- C. The maximum number of occupants permitted to stay in the dwelling.
- D. The standards for the rental occupancy.
- E. The solid waste collection day.

15.445.350- Complaints and revocation of registration

Owner/management is fully aware and understands the above code and will make every effort to follow up with all complaints.

Sample mailer Attached:

We are mailing you information about this project because you own land within 500 feet of the proposed new project. We invite you to send any written comments for or against the proposal within 14 days from the date this notice is mailed. You also may request that the Newberg Planning Commission hold a hearing on the application by sending a written request during this 14-day period and identifying the issues you would like the Planning Commission to address.

If you mail your comments to the City, please put the following information on the outside of the envelope:

Written Comments: File No.XX **(City staff will give you the file number for
City of Newberg your project at the time of application)**
Community Development Department
PO Box 970
Newberg, OR 97132

All written comments must be turned in by 4:30 p.m. on **enter date two weeks from date you mailed notice**. Any issue which might be raised in an appeal of this case to the Land Use Board of Appeals (LUBA) must be submitted to the City in writing before this date. You must include enough detail to enable the decision maker an opportunity to respond. The applicable criteria used to make a decision on this application for preliminary subdivision plan approval are found in Newberg Development Code 15.235.060(A).

You can look over all the information about this project or drop comments off at Newberg City Hall, 414 E. First Street. You can also buy copies of the information for a cost of 25 cents a page. If you have any questions about the project, you can call the Newberg Planning Division at 503-537-1240.

The Community Development Director will make a decision at the end of a 14-day comment period. If you send in written comments about this project, you will be sent information about any decision made by the City relating to this project.

Date Mailed: ***Date notice is mailed***

2035 N Heritage Way

Newberg, OR 97132

Existing Site Narrative

- This home was built in 2011 and no changes need to be made to existing structure.
- Yard has a manicured lawn in the front and back with all foliage being watered using a timed irrigation system.
- The backyard is completely fenced.

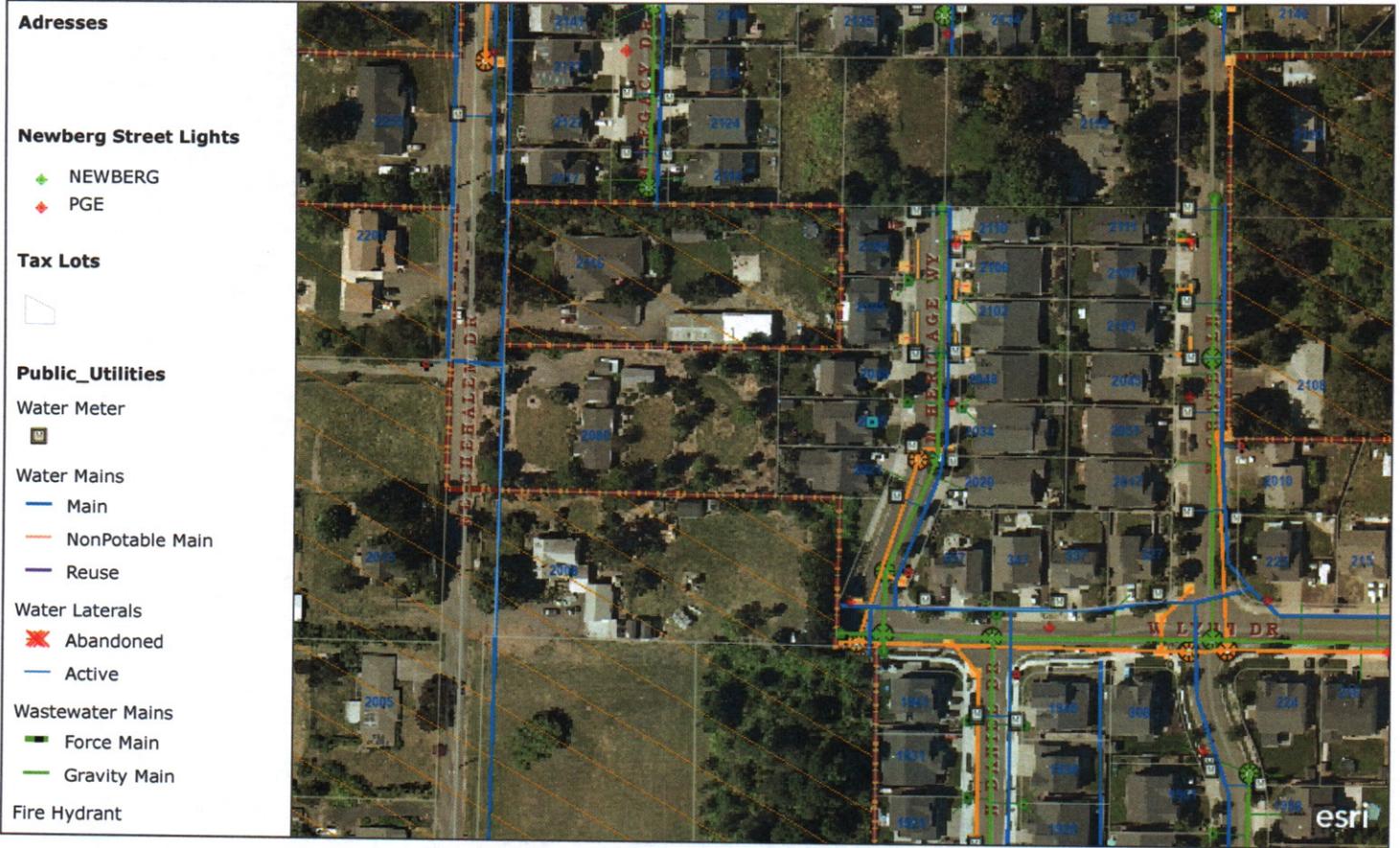
Drainage and Grading

- The house has very good drainage. The grading is from the backyard to the front and the driveway slopes to the street allowing for all drainage to move away from the home.

Utilities

- City of Newberg public utilities map attached.

Public Utilities Map



City of Newberg, Oregon Metro, Bureau of Land Management, State of Oregon, State of Oregon DOT, State of Oregon GEO, Esri Canada, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA, USDA | City of Newberg, Oregon Metro, Geoterra | Originally created by Jan Wolf 2007-present



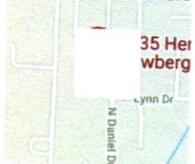
Newberg, Oregon

Image capture: Jun 2012 © 2022 Google

Google

Street View - Jun 2012

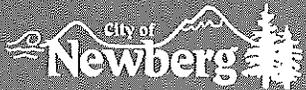
St Peter Catholic Church





Imagery ©2022 Metro, Portland Oregon, Map data ©2022 20 ft

Attachment 2: Agency Comments



COMMUNITY DEVELOPMENT
LAND USE APPLICATION REFERRAL

REFERRAL TO: Enginneering Brett Musick

The enclosed material has been referred to you for your information and comment. Any comments you wish to make should be returned to the Community Development Department prior to: March 21, 2022. Please refer questions and comments to Doug Rux.

NOTE: Full size plans are available at the Community Development Department Office.

APPLICANT: Todd and Melissa Nelson

REQUEST: Short Term Rental

SITE ADDRESS: 2035 N Heritage Way

LOCATION:

TAX LOT: R3218AB 01211

FILE NO: ~~DR122-0001~~ CUP 22-0003

ZONE: R-2

HEARING DATE:

Reviewed, no conflict.

Reviewed; recommend denial for the following reasons:

Require additional information to review. (Please list information required)

Meeting requested.

Comments. (Attach additional pages as needed)

Brett Musick

Reviewed By:

3/15/2022

Date:



COMMUNITY DEVELOPMENT LAND USE APPLICATION REFERRAL

REFERRAL TO: Building Official Brooks Bateman

The enclosed material has been referred to you for your information and comment. Any comments you wish to make should be returned to the Community Development Department prior to: March 21, 2022. Please refer questions and comments to Doug Rux.

NOTE: Full size plans are available at the Community Development Department Office.

APPLICANT: Todd and Melissa Nelson
REQUEST: Short Term Rental
SITE ADDRESS: 2035 N Heritage Way
LOCATION:
TAX LOT: R3218AB 01211
FILE NO: DR122-0001
ZONE: R-2



HEARING DATE:

- Reviewed, no conflict.
- Reviewed; recommend denial for the following reasons:
- Require additional information to review. (Please list information required)
- Meeting requested.
- Comments. (Attach additional pages as needed)



 Reviewed By:

3.23.22

 Date:



COMMUNITY DEVELOPMENT LAND USE APPLICATION REFERRAL

REFERRAL TO: Police Department Chief Jeff Kosmicki

The enclosed material has been referred to you for your information and comment. Any comments you wish to make should be returned to the Community Development Department prior to: March 21, 2022. Please refer questions and comments to Doug Rux.

NOTE: Full size plans are available at the Community Development Department Office.

APPLICANT: Todd and Melissa Nelson
REQUEST: Short Term Rental
SITE ADDRESS: 2035 N Heritage Way
LOCATION:
TAX LOT: R3218AB 01211
FILE NO: DR122-0001 *CUP22-0003*
ZONE: R-2



HEARING DATE:

- Reviewed, no conflict.
- Reviewed; recommend denial for the following reasons:
- Require additional information to review. (Please list information required)
- Meeting requested.
- Comments. (Attach additional pages as needed)



 Reviewed By:

3/8/2022

 Date:

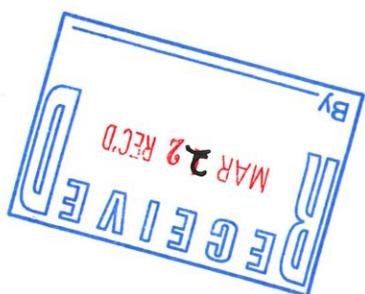

**COMMUNITY DEVELOPMENT
LAND USE APPLICATION REFERRAL**

REFERRAL TO: Public Works: Waste Water Plant April Catan

The enclosed material has been referred to you for your information and comment. Any comments you wish to make should be returned to the Community Development Department prior to: March 21, 2022. Please refer questions and comments to Doug Rux.

NOTE: Full size plans are available at the Community Development Department Office.

APPLICANT: Todd and Melissa Nelson
REQUEST: Short Term Rental
SITE ADDRESS: 2035 N Heritage Way
LOCATION:
TAX LOT: R3218AB 01211
FILE NO: DR122-0001
ZONE: R-2



HEARING DATE:

- Reviewed, no conflict.
- Reviewed; recommend denial for the following reasons:
- Require additional information to review. (Please list information required)
- Meeting requested.
- Comments. (Attach additional pages as needed)



 Reviewed By:

3/21/22

 Date:



COMMUNITY DEVELOPMENT LAND USE APPLICATION REFERRAL

REFERRAL TO: PWM Supervisor Carl Ramseyer

The enclosed material has been referred to you for your information and comment. Any comments you wish to make should be returned to the Community Development Department prior to: March 21, 2022. Please refer questions and comments to Doug Rux.

NOTE: Full size plans are available at the Community Development Department Office.

APPLICANT: Todd and Melissa Nelson
REQUEST: Short Term Rental
SITE ADDRESS: 2035 N Heritage Way
LOCATION:
TAX LOT: R3218AB 01211
FILE NO: ~~DR122-0001~~ CUP22-0003
ZONE: R-2



HEARING DATE:

- Reviewed, no conflict.
- Reviewed; recommend denial for the following reasons:
- Require additional information to review. (Please list information required)
- Meeting requested.
- Comments. (Attach additional pages as needed)

Carl Ramseyer
 Reviewed By:

3/9/2022
 Date:



COMMUNITY DEVELOPMENT LAND USE APPLICATION REFERRAL

REFERRAL TO: Public Works: Maintenance Superintendent Preston Langeliers

The enclosed material has been referred to you for your information and comment. Any comments you wish to make should be returned to the Community Development Department prior to: March 21, 2022. Please refer questions and comments to Doug Rux.

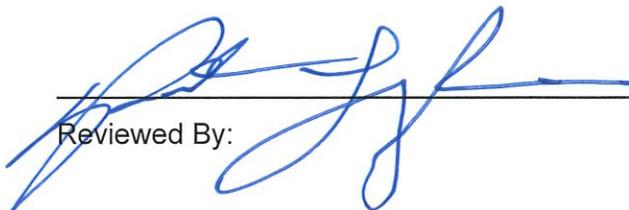
NOTE: Full size plans are available at the Community Development Department Office.

APPLICANT: Todd and Melissa Nelson
REQUEST: Short Term Rental
SITE ADDRESS: 2035 N Heritage Way
LOCATION:
TAX LOT: R3218AB 01211
FILE NO: ~~DR122-0001~~ CVP22-0003
ZONE: R-2



HEARING DATE:

- Reviewed, no conflict.
- Reviewed; recommend denial for the following reasons:
- Require additional information to review. (Please list information required)
- Meeting requested.
- Comments. (Attach additional pages as needed)



 Reviewed By:

3/9/22

 Date:



COMMUNITY DEVELOPMENT LAND USE APPLICATION REFERRAL

REFERRAL TO: Public Works: Maintenance Vance Barton

The enclosed material has been referred to you for your information and comment. Any comments you wish to make should be returned to the Community Development Department prior to: March 21, 2022. Please refer questions and comments to Doug Rux.

NOTE: Full size plans are available at the Community Development Department Office.

APPLICANT: Todd and Melissa Nelson
REQUEST: Short Term Rental
SITE ADDRESS: 2035 N Heritage Way
LOCATION:
TAX LOT: R3218AB 01211
FILE NO: ~~DR122-0001~~ CVP22-0003
ZONE: R-2



HEARING DATE:

- Reviewed, no conflict.
- Reviewed; recommend denial for the following reasons:
- Require additional information to review. (Please list information required)
- Meeting requested.
- Comments. (Attach additional pages as needed)

Vance Barton
 Reviewed By:

3/9/2022
 Date:



COMMUNITY DEVELOPMENT LAND USE APPLICATION REFERRAL

REFERRAL TO: Ziplly Fiber Attn: Engineering

The enclosed material has been referred to you for your information and comment. Any comments you wish to make should be returned to the Community Development Department prior to: March 21, 2022. Please refer questions and comments to Doug Rux.

NOTE: Full size plans are available at the Community Development Department Office.

APPLICANT: Todd and Melissa Nelson
REQUEST: Short Term Rental
SITE ADDRESS: 2035 N Heritage Way
LOCATION:
TAX LOT: R3218AB 01211
FILE NO: CUP22-0003
ZONE: R-2

HEARING DATE:

Reviewed, no conflict.

Reviewed; recommend denial for the following reasons:

Require additional information to review. (Please list information required)

Meeting requested.

Comments. (Attach additional pages as needed)




Reviewed By: **Scott Albert - Network Engineer**
ZiPLY Fiber

3/11/22

Date:

Planning Commission Agenda Item Report

Meeting Date: April 14, 2022

Submitted by: Doug Rux

Submitting Department: Community Development

Item Type: PC NEW BUSINESS

Agenda Section:

Subject:

Update City of Newberg Planning Commission Participation Guidelines for consistency with NMC Chapter 2.15 Departments, Boards and Commissions

Suggested Action:

Adopt Planning Commission Resolution No. 2022-379

Attachments:

[GEN22-0006 Planning Commission Participation Guidelines Update w Exhibit-Attachment.pdf](#)

PLANNING COMMISSION STAFF REPORT
CITY OF NEWBERG PLANNING COMMISSION GUIDELINES AMENDMENT

MEETING DATE: April 14, 2022

FILE NO: GEN22-0006

REQUEST: Update City of Newberg Planning Commission Participation Guidelines for consistency with NMC Chapter 2.15 Departments, Boards and Commissions

LOCATION: N/A

TAX LOT: N/A

APPLICANT/OWNER: Community Development Department

ZONE: N/A

PLAN DISTRICT: N/A

ATTACHMENTS:

Planning Commission Resolution No. 2022-379 with:

Attachment 1: City of Newberg Planning Commission Participation Guidelines Tack Changes

- A. DESCRIPTION OF REQUEST:** The City Council updated NMC Title 2 Administration and Personnel, Chapter 2.15 Departments, Boards and Commissions on December 6, 2021. The updates were brought forward to the full City Council by a subcommittee on committees. The changes went into effect on January 6, 2022.

The changes addressed removal of committee members for absenteeism, membership residency, terms of office, student commissioners, and election of chair and vice chair. The NMC changes require updates to the City of Newberg Planning Commissioner Participation Guidelines.

- B. ANALYSIS:** The amendments to the City of Newberg Planning Commission Participation Guidelines occur to the following sections.

SECTION 3 – PLANNING COMMISSION MEMBERS

Rule 3.1 Attendance.

The language has been modified to reflect attending 75% of the Commission meetings unless the absence has been excused.

Rule 3.3 Report of Absences.

The language has been modified to reflect the Community Development Director reporting to the Chair and City Council if a member has not met the 75% attendance requirement and to refill the Commission seat.

Rule 3.5 Student Planning Commissioner

The language has been modified to reflect that student commissioners can be high school or college students, appointments are in conformance with NMC 2.15.005, and the appointment term is one year.

Rule 7.7 Time Limits for Testimony

This is a general clean up to reference the Community development Director rather than the Planning Director.

- H. STAFF RECOMMENDATION:** The staff recommendation is:

Move to adopt Planning Commission Resolution No. 2022-379, which approves the requested updates to the City of Newberg Planning Commission Participation Guidelines in Exhibit “A”.



PLANNING COMMISSION RESOLUTION 2022-379

A RESOLUTION AMENDING THE CITY OF NEWBERG PLANNING COMMISSION PARTICIPATION GUIDELINES

RECITALS

1. The City Council adopted Ordinance No. 2021-2892 amending NMC Title 2 Administration and Personnel, Chapter 2.15 Departments, Boards and Commissions on December 6, 2021.
2. The City of Newberg Planning Commission Participation Guidelines need to be amended to be in alignment with Ordinance No. 2021-2892.
3. The Newberg Planning Commission finds that the amendments are in alignment with Ordinance No. 2021-2892.

The Newberg Planning Commission orders as follows:

1. Resolution No. 2022-379 is adopted amending the City of Newberg Planning Commission Participation Guidelines as contained in Exhibit “A”. Exhibit “A” is hereby adopted and by this reference incorporated.

Adopted by the Newberg Planning Commission this 14th day of April 2022.

ATTEST:

Planning Commission Chair

Planning Commission
Secretary

List of Exhibits:

Exhibit “A”: City of Newberg Planning Commission Participation Guidelines

Exhibit A

CITY OF NEWBERG PLANNING COMMISSION PARTICIPATION GUIDELINES

Adopted January 12, 2012

Amended June 9, 2016

Amended April 14, 2022

NEWBERG PLANNING COMMISSION PARTICIPATION GUIDELINES

Newberg planning commission members will strive to:

- 1) Trust and respect the opinions of fellow commission members, staff, and the public and actively participate in the decisions of the planning commission.
- 2) Attend all planning commission meetings.
- 3) Notify the planning staff of an absence as soon as practical prior to the meeting time.
- 4) Make every attempt to resolve any personal conflict with a fellow planning commissioner prior to bringing the conflict to the attention of the planning commission.
- 5) Study material presented in a timely manner and be informed on the issues that come before the commission.
- 6) Follow the commission rules.

NEWBERG PLANNING COMMISSION MEETING EXPECTATIONS

Newberg planning commission members will:

- 1) Be courteous and respectful of citizens and create a welcoming environment that actively involves citizens in the governmental process.
- 2) Communicate in clear, concise and audible verbal and written communications.
- 3) Use a friendly and sincere tone of voice.
- 4) Honor and act on all requests for action and/or information in a timely and courteous manner.
- 5) Discuss issues, but not personalities, with non-commission members.
- 6) After an issue has been voted on, commission members will speak for themselves carefully, in a manner that does not undermine the integrity or motives of the planning commission, even if their personal opinion differs from the planning commission's decision.
- 7) Vote on all motions before the commission, or explain the reasons for abstaining.

CITY OF NEWBERG PLANNING COMMISSION RULES

**Adopted January 12, 2012
Amended June 9, 2016
Amended April 14, 2022**

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Newberg Planning Commission Rules

SECTION 1 – AUTHORITY

Rule 1.1 Authority of Rules

The planning commission will adopt commission rules by resolution to govern its meetings and proceedings. These rules will decide questions and give direction on debating, voting, membership, attendance, agendas, and other matters. The rules are intended to serve as a guide for the planning commission. One of the goals of the planning commission is to work with the residents of Newberg and provide a positive atmosphere at planning commission meetings. These rules provide the basic outline required to work together. The commission may need to vary from these rules from time to time to best serve the public interest.

Rule 1.2 Questions about these Rules

All questions regarding these rules will be resolved by majority vote of the commission.

Rule 1.3 Presentation of Rules to Planning Commission Members

These planning commission rules will be presented to all planning commission members at or before the time they take the oath of office.

Rule 1.4 Amendments to Planning Commission Rules

Amendments to these planning commission rules will be made by resolution.

SECTION 2 – GENERAL RULES

Rule 2.1 Public Meetings Law

All planning commission meetings will be held in accordance with the Oregon Public Meetings Law (“OPML”). The meetings of the commission, including regular meetings, special meetings, work sessions and emergency meetings are open to the public. The meetings are considered a limited public forum at which planning commission business is conducted in accordance with the agenda and rules of the planning commission. The chair, along with the commission, has the authority to require discussion at the meetings be addressed to the matters that are appropriate to be considered, to limit the time for discussion, and to restrict input concerning the matters to be discussed. The planning commission has the right to require persons attending the meeting, addressing the commission or participating in the meeting to conform to the rules of the commission and directions of the chair.

Rule 2.2 Quorum

Section 2.15.280 of city’s municipal code provides that a majority of the voting members of the planning commission constitutes a quorum to conduct business.

Rule 2.3 Lack of Quorum

If there is a lack of quorum at any scheduled meeting, any hearings scheduled shall be continued to the next scheduled meeting of the commission by announcement to those present, or by posting notice of such continuance prominently at the meeting location.

Rule 2.4 Rules of Order

"Robert's Rules of Order, Newly Revised, Tenth Edition" or the latest editions published thereafter hereafter referred to as "Robert's Rules of Order" will govern all planning commission proceedings unless they conflict with these rules. The chair will have the authority to appoint a parliamentarian for the commission. If there is no person appointed as parliamentarian or that person is absent, the city attorney or community development director will advise the chair concerning parliamentarian matters.

Rule 2.5 Enforcement of Rules

The chair will enforce the planning commission rules. In addition, the chair has the authority to preserve decorum and will determine all points of order, subject to the right of any planning commissioner to appeal to the commission. The chair will enforce order, prevent attacks on personalities or the impugning of members' motives, and keep those in debate to the question under discussion.

Rule 2.6 Suspension of Rules

The vote to suspend commission rules, including Robert's Rules of Order, requires a majority vote of those members of the planning commission who are present. If the motion is carried, the rules will be suspended for that item only.

Rule 2.7 Commissioners Duties to Uphold Rules and Decorum

Commissioners will preserve order and decorum during planning commission meetings, and will not by conversation or other action delay or interrupt the proceedings or refuse to obey the orders of the chair and commission rules. Commissioners will, when addressing staff or commissioners, confine themselves to questions or issues that are under discussion, will not engage in personal attacks, will not impugn the motives of any speaker, and will at all times, while in session or otherwise, conduct themselves in a manner appropriate to the dignity of office. Commissioners will not attack the knowledge, skills, abilities and personalities or impugn city staff members' motives in commission or at any city meetings.

Rule 2.8 Removal of Any Person for Violation of Rules

Any persons making disruptive or threatening remarks or actions during a meeting will forthwith be barred from further audience at that meeting, unless permission to continue is granted by a majority vote of the commissioners present. The community development director or chair may summon the assistance of the police or other administrative staff to prevent further interruption by such person by any action necessary, including the removal of that individual. In case the community development director or chair should fail to act, any commissioner may obtain the floor and move to require enforcement of this rule, upon an affirmative vote of the majority of the commissioners present, the police or administrative staff will be authorized to remove the person(s) as the chair so directs.

Rule 2.9 Records of Proceedings

The Community Development Department will provide a secretary for the commission who will keep a record of commission proceedings. The records of the proceedings are to be known as "minutes." The minutes will be kept in accordance with the Oregon Public Records and Meetings Law.

SECTION 3 – PLANNING COMMISSION MEMBERS

Rule 3.1 Attendance

It is the duty of each commissioner to attend all meetings of the planning commission unless excused. Any member who fails to attend at least seventy-five percent of the regular meetings in any one year of their term shall be disqualified from serving on the commission unless absences are determined to be excused. Upon certification of such disqualification by the commission the commissioner will be replaced by the city council as is provided for the filling of vacancies.

Rule 3.2 Excused Absences

When a commissioner cannot attend a meeting, the member is to notify the community development director prior to the meeting. Absences will be considered excused when such notice is given. An absence will be considered unexcused if there is no notification of the absence prior to the meeting, unless otherwise determined by vote of the commission.

Rule 3.3 Report of Absences

The community development director will report to the commission chair any time a commissioner fails to attend at least seventy-five percent of the regular meetings in any one year of their term. The community development director also will report to the city council any time a commissioner fails to attend at least seventy-five percent of the regular meetings in any one year of their term. The purpose of this notice is to inform the council of the member's attendance, and to refill the commission seat as is provided for the filling of vacancies.

Rule 3.4 Mayor as Ex-Officio Member of the Planning Commission

By code, the mayor serves as a non-voting ex-officio member of the planning commission. The mayor shall be invited to, but is not obligated to, attend all meetings and activities of the planning commission. When attending, the mayor shall sit with the commission.

When participating in legislative matters, the mayor shall be invited to participate in the discussion. The mayor shall recuse himself/herself from quasi-judicial matters that eventually may be before the council for decision. This is to avoid questions of ex parte contact or bias in the decision.

Rule 3.5 Student Planning Commissioner

The student planning commissioner is a high school student or college student is appointed in accordance with NMC 2.15.005 The student planning commissioner is expected to attend all planning commission meetings. The student commissioner serves a one-year term and is allowed and encouraged to participate in all planning commission events and activities.

Rule 3.6 Planning Commissioner Training

The City shall offer training to planning commissioners to educate them in their duties. It shall be the duty of any newly appointed planning commissioner to attend a basic training session from staff within 30 days of his or her appointment. It shall be the duty of any re-appointed planning commissioner to attend at least a one-hour training session from staff or offered by the city within 12 months of the beginning of that person's appointed term. Planning commissioners are strongly encouraged to attend training of some kind annually.

SECTION 4 – PRESIDING OFFICER

Rule 4.1 Chair

The chair will preside over and facilitate all planning commission meetings, preserve order, enforce commission rules, and determine the order of business pursuant to planning commission rules. The chair is a voting member of the commission and will sign all records of planning commission decisions.

Rule 4.2 Vice Chair

In the absence of the chair, or if the chair is unable to perform the chair's duties, the vice chair will act as the presiding officer. Whenever in these rules the chair is mentioned, the vice chair acting as presiding officer can exercise the same authority as the chair. The vice chair also assists the chair in his/her duties, such as keeping time, maintaining order, and determining order of speakers.

Rule 4.3 Chair Pro Tem

In the absence of the chair and vice chair at any meeting of the planning commission where a quorum is present, the planning commission members present shall appoint a chair pro tem who will act as presiding officer. The chair pro tem will exercise all the authority of the chair during that meeting.

Rule 4.4 Election of Chair and Vice Chair

At the first meeting of each year, or upon vacancy of the current chair or vice chair, the commission shall elect a chair and vice chair for the remainder of the calendar year. The commission's policy is to rotate the positions by seniority in such a fashion that each member has the opportunity to serve first as vice-chair, and then the following year as chair. Newly appointed members will be placed at the bottom of the current rotation to allow them to serve a few years first as commissioner then later as chair and vice chair. In case multiple members are appointed at the same time, the commission will decide seniority by vote. The policy does not compel any member to serve as chair who is unwilling, nor does it compel election when the majority determines the commission would be better served by election of different officers. The commission shall consent to the election of each chair and vice chair and absent such consent, shall elect positions by majority vote.

SECTION 5 – PLANNING COMMISSION MEETINGS

Rule 5.1 Regular Meetings

Section 2.15.280 of city's municipal code provides that the planning commission must meet at least once a month at a time and place designated by the planning commission. The planning commission designates through these rules that the regular meetings of the commission will be held on the second Thursday of each month, except on holidays in which event the commission will meet on the second Wednesday. The commission also will meet on the fourth Thursday if business so requires.

Rule 5.2 Meeting Times and Places

The regular meetings of the commission will begin at 7:00 p.m. Regular planning commission meetings will take place in the Public Safety Building in the training room at 401 E Third St., unless specifically designated to occur at another location. Any other such location will be noted in the notice of the meeting. There will be no new items presented after 10:00 p.m. except by vote of the planning commission.

Rule 5.3 Notice of Meeting

The notice of the regular meeting of the planning commission, including the agenda which lists items to be considered by the planning commission, will be given in accordance with the OPML. However, the notice does not limit the matters that can be considered by the planning commission nor prevent the

commission from taking up any matter brought before the commission in accordance with the OPML.

Rule 5.4 Special Meetings

The chair, upon the chair’s own motion and after consulting the community development director, may, or at the request of three members of the commission, shall, by giving notice to the members of the commission, call a special meeting of the commission for a time not earlier than 24 hours after the notice is given. Notice of a special meeting shall be posted at City Hall and to the extent feasible, provided to interested persons and the local newspaper at least 24 hours prior to the meeting.

Rule 5.5 Cancellation of Meeting

Upon a majority vote of the planning commission members present, a meeting may be canceled when deemed appropriate. If there is no business to transact or a quorum of the planning commission cannot attend and there is no urgent necessity to have the meeting, the community development director with advice and consent of the chair may cancel the meeting. Planning commission members will be notified of the cancellation prior to notice being given to the public. Notice of cancellation will be given as soon as possible to the public in a manner aimed at giving adequate notice.

**SECTION 6 – AGENDAS AND ADDITIONAL ITEMS FOR
CONSIDERATION**

Rule 6.1 Preparation of Agenda

The community development director with the advice and consent of the chair will prepare the agenda along with appropriate documentation for planning commission meetings. Any member of the planning commission may request, through the chair, for a matter to be placed upon the agenda. Such request is subject to the advice of the community development director. Each meeting agenda’s format will be prepared as prescribed in the rules. If there is no item to be considered under a section of the agenda, that section will be omitted from the agenda and the agenda will be renumbered accordingly. The final authority on the agenda matters is the planning commission.

Rule 6.2 Non-Agenda Items

Prior to the meeting, the community development director may send out additions to the agenda with the appropriate documentation. The planning commission may consider the items which are not listed on the published agenda. The planning commission must, by a majority, place the item on the agenda. Action may then be taken on the item.

Rule 6.3 Time for Submission of Items

Items for the planning commission agenda will be submitted in time to allow for sufficient research by staff.

Rule 6.4 Staff Reports

Normally the staff will send a report of each planning commission item to be considered by the planning commission at least eight days prior to the commission meeting.

Rule 6.5 Agenda Availability

Planning commission agendas and the accompanying documents are available at the city planning division office and are posted on the city website normally eight days prior to the planning commission meeting. Interested persons are encouraged to read the agenda along with supporting material, and address questions to the community development director or city staff prior to the meeting. The community development director and planning commission value public input. In order to efficiently conduct city business, those who have concerns are encouraged to address these issues prior to the

planning commission meeting.

Rule 6.6 Regular Meeting Agenda

The regular meeting agenda will be as follows:

- I. Call Meeting to Order
- II. Administration of Oath of Office (if needed)
- III. Roll Call
- IV. Public Comment (30 minutes maximum which may be extended at the chair’s discretion; an opportunity to speak for not more than five minutes per speaker allowed)
- V. Consent Calendar
- VI. Public Hearings
- VII. Continued Business
- VIII. New Business
- IX. Items from Staff
- X. Items from Commissioners
- XI. Adjournment

At the chair’s discretion, the chair may change the order of the agenda and allow communications concerning items on the agenda or other commission business.

Rule 6.7 Consent Calendar

The community development director will place items which have been previously reviewed by the planning commission or items which are routine in nature on the consent calendar. Items may be removed from the consent calendar by the chair or by request of a planning commission member. Public comments will be held prior to the approval of the consent calendar to allow the public to address items under consent calendar.

SECTION 7 – PROCEDURES AT MEETINGS

Rule 7.1 Call to Order

The chair will call the planning commission members to order at the hour designated for the meeting. The secretary will call roll. Should there not be a quorum within 15 minutes, the members present will adjourn until a quorum can be gathered or until the next scheduled meeting time established by the planning commission or to the next regular meeting time.

Rule 7.2 Public Comment on Non-Agenda Items

Persons speaking to the planning commission concerning items not on the agenda or items that are on the consent calendar would speak under the public comment period. Those persons will be given the opportunity to speak for up to five minutes. Speakers may share their time at the discretion of the chair. The maximum time allowed for public comment, including all speakers, is 30 minutes. The chair has the discretion to extend these time limits. Speakers may address the planning commission for less than their allotted time. Speakers may also submit information at the meeting. The commission normally will not take immediate action on any request raised, but may consider acting on a request during items from commissioners.

Rule 7.3 Legislative Public Hearings

For legislative hearings, the commission will follow the legislative hearing format shown in Exhibit “1”. The planning commission’s legislative authority is usually exercised by the adoption of a

resolution.

Rule 7.4 Quasi-judicial Public Hearings

For quasi-judicial hearing, the commission will follow the quasi-judicial hearing format shown in Exhibit “2”. The planning commission’s quasi-judicial authority is usually exercised by adoption of an order when the commission is the final decision maker, and by adoption of a resolution when the commission is a recommending body only.

Rule 7.5 Public Comment Registration

In order to properly notify persons who participate in the hearing and to be able to send them information, it is necessary for the interested person to register at the planning commission meeting before making oral comments and/or providing input at the meeting. The interested person shall register for each subject under which they wish to provide comment. The public comment registration forms will be made part of the meeting records in accordance with OPML. The registration forms will contain a provision by which a person may indicate that they do not wish for their address, phone number, and email address to be released in any public records request. When the interested person addresses the commission or gives oral comments, that person should state their name, but does not need to state their mailing address, phone number, or email address. A form complying with this rule will be available at all meetings of the planning commission. The community development director may produce and revise the necessary form that complies with this rule.

Rule 7.6 Public Testimony

Each interested person addressing the commission should do so in a courteous and considerate manner. The person needs to register and follow other rules as provided in the commission rules. The public will be furnished guidelines and should comply with these guidelines for testifying before the planning commission.

Rule 7.7 Time Limits for Testimony

The principal applicant for a proposal will be allotted 15 minutes for an initial presentation. Prior to the meeting the applicant may petition the community development director for additional time for the initial presentation, not to exceed 30 minutes.

A principal opponent, if any, will be allotted time in the same manner as the principal applicant.

All other speakers will be given the opportunity to speak for up to five minutes. Speakers may share their time at the discretion of the chair.

The chair has the discretion to extend these time limits.

Rule 7.8 Written Testimony

In order to be considered at a hearing, written testimony must be received at the Community Development Department by noon on the third business day (typically Monday) prior to any meeting. Written testimony received after that date will be read out loud at the meeting, subject to time limits for speakers, and will be included in the record if there are future proceedings.

Rule 7.9 Ex parte Contact

Whenever the planning commission conducts a quasi-judicial public hearing, the planning commission must declare any ex parte contact. Rules concerning ex parte contact are set forth in state law.

Commissioners may visit a site individually prior to hearing an application, and shall declare the

substance of that visit as ex parte contact. Otherwise, planning commissioners should avoid ex parte contacts.

Rule 7.10 Questions of Speakers

Commissioners may ask questions of speakers following their testimony. Such questions should be directed to elicit information that will help the commission reach a decision. Commissioners should avoid debating or arguing with speakers.

Rule 7.11 Order of Deliberation

The commission’s deliberation on an agenda item may begin with a formal motion, or an informal discussion. If the informal discussion is not leading toward a decision, the chair shall call for a formal motion.

The chair shall determine the order of speakers to a motion. Except as otherwise determined by the chair, the maker of the motion will speak first to the motion, followed by the second, and then by other commissioners in the order they request to speak.

Rule 7.12 Speaking and Addressing the Chair

When any commissioner is about to speak in debate or deliver any matter to the planning commission, that commissioner should respectfully address the chair, and be given the floor before speaking. The commissioner should confine the remarks to the question under consideration.

The commissioner should use electronic speaking equipment provided to insure his or her comments are recorded.

Rule 7.13 Motions, Seconds, and Decisions by Unanimous Consent

Generally, no motion will be considered unless it has been seconded. However, routine motions that have the general consent of the planning commission do not require a second, unless requested by any member of the planning commission. Motions brought forth by the chair, which receive no seconds, but also no objections, will be passed by unanimous consent.

Rule 7.14 Voting and Abstaining from Voting

Commissioners shall vote on each motion brought before the commission, or shall explain the reason for abstaining.

Commissioners who abstain from participating in a matter due to a conflict of interest shall retire to the lobby during the time the matter is under consideration. A commissioner in the lobby will continue to be counted in the quorum. Commissioners may not provide testimony before the commission on any matter from which they abstain, but may designate a representative to speak to their interests.

Rule 7.15 Tabled Items

Items that are tabled may be taken from table by majority vote any time during the calendar year, but no later. Items may be postponed to a time certain, including to a following year.

Rule 7.16 Reconsideration

When a question has been decided, it will be in order for a member who voted on the prevailing side to move for reconsideration at the same meeting or next meeting only. For quasi-judicial matters, a motion for reconsideration at the next meeting only may be made upon request of the applicant, having waived rights to the time limits for decisions, and only to correct any technical issue in a decision and not to reverse a decision or decide again any substantive issue.

SECTION 8 – ELECTRONIC MAIL AND ELECTRONIC COMMUNICATION

Rule 8.1 Electronic Mail and Electronic Communication

E-mail or other forms of electronic communication may be used to schedule meetings, send informative messages, or request information from other planning commissioners or the community development director, except as limited by these rules or other applicable law. E-mail or other electronic communication may not be used to discuss policy issues with a quorum of the planning commission at one time or a quorum of a standing advisory body in any manner which would be in violation of the OPML. All planning commission e-mail correspondence is subject to the Oregon Public Records and Meetings Laws and is subject to disclosure.

Rule 8.2 Electronic Mail and Electronic Communication Regarding Quasi-Judicial Items

Commissioners shall refrain from sending electronic communication regarding the substance of any quasi-judicial item. If commissioners receive e-mail or electronic communication concerning the substance of any quasi-judicial item, they shall forward the communication to the community development director. As such information may be ex parte contact, commissioners shall avoid reading such communication outside the period the record is open for written comment. If reading such items is unavoidable, the commissioner shall declare the ex parte contact.

SECTION 9 - RELATIONSHIP WITH THE CITY COUNCIL

Rule 9.1 Role of Planning Commission in Relation to the City Council

Members of the planning commission are appointed by the mayor with consent of the city council. The mayor and council appoint them to provide study and perspective on issues beyond what the council can provide. Commissioners provide the highest value providing independent recommendations and not anticipating or mimicking what they feel the council's decision on a matter would be.

After the city council has voted on an issue that previously has been before the planning commission, commission members will speak for themselves carefully, in a manner that does not undermine the integrity or motives of the city council, even if their personal opinions or the commission's decisions differ from the city council's decision.

Rule 9.2 Joint Meetings with City Council or Other Boards

The commission should periodically hold joint meetings with the city council to share directly information and perspectives regarding particular issues. The mayor shall preside at such joint meetings.

The commission also may have joint meetings with other boards or commissions, such as the traffic safety commission. The chairs of the boards shall determine the agenda and the manner of facilitating the meeting.

Rule 9.3 Planning Commission Presentations at City Council Work Sessions

The city council has established a work session before council meetings, and has invited the planning commission to make presentations on any matter during that meeting. The commission may appear as a whole, the chair or vice-chair may represent the commission, or the commission may appoint one or more members to represent the commission to the council. The planning commission chair shall notify the mayor as far in advance as possible and at least one week in advance of the meeting if the commission wishes to make use of this time

Rule 9.4 Attendance at and Participation in City Council Meetings

In legislative matters, after the planning commission has taken action on an item, the mayor or city manager may request that the chair or chair's designee attend a city council meeting to report the commission's recommendation. The planning commission also may appoint a representative to attend the city council meeting and convey the commission's recommendation.

On quasi-judicial items, the planning commission's report to the council consists of their written decision, findings and the record. Commission members do not speak at the council meeting unless requested by the city council or mayor.

Otherwise, planning commissioners may attend any meeting of the city council. They may speak to the council for themselves as a citizen on any item.

OUTLINE FOR LEGISLATIVE PUBLIC HEARING
Newberg Planning Commission

- 1. CALL TO ORDER**
OPEN THE PUBLIC HEARING, ANNOUNCE THE PURPOSE, DISCUSS TESTIMONY PROCEDURE, AND TIME ALLOTMENTS
- 2. CALL FOR ABSTENTIONS AND OBJECTIONS TO JURISDICTION**
- 3. STAFF REPORT**
COMMISSION MAY ASK BRIEF QUESTIONS FOR CLARIFICATION
- 4. PUBLIC TESTIMONY**
5 MINUTE TIME LIMIT PER SPEAKER (15 MINUTE LIMIT FOR APPLICANT AND PRINCIPAL OPPONENT). SPEAKER GOES TO WITNESS TABLE, STATES NAME & PRESENTS TESTIMONY. COMMISSION MAY ASK QUESTIONS OF SPEAKERS.
 - A. APPLICANT(S) (IF ANY)
 - B. OTHER PROPONENTS
 - C. OPPONENTS AND UNDECIDED
 - D. STAFF READS WRITTEN CORRESPONDENCE (TIME LIMIT APPLIES)
 - E. APPLICANT (IF ANY) REBUTTAL
- 5. CLOSE OF PUBLIC TESTIMONY PORTION OF HEARING**
- 6. FINAL COMMENTS FROM STAFF AND RECOMMENDATION**
- 7. PLANNING COMMISSION DELIBERATION**
- 8. ACTION BY THE PLANNING COMMISSION**
 - A. RESOLUTION – Usually requires passage of resolution.
 - B. VOTE – Vote is done by roll call.
 - C. COMBINATION – Can be combined with other commission action; separate vote on each action is required.

OUTLINE FOR QUASI-JUDICIAL PUBLIC HEARING
Newberg Planning Commission

- 1. CALL TO ORDER**
OPEN THE PUBLIC HEARING, ANNOUNCE THE PURPOSE, DISCUSS TESTIMONY PROCEDURE, AND TIME ALLOTMENTS
- 2. CALL FOR ABSTENTIONS, BIAS, EX PARTE CONTACT, AND OBJECTIONS TO JURISDICTION**
- 3. LEGAL ANNOUNCEMENT**
READ “QUASI-JUDICIAL ANNOUNCEMENTS” SHEET
- 4. STAFF REPORT**
COMMISSION MAY ASK BRIEF QUESTIONS FOR CLARIFICATION
- 5. PUBLIC TESTIMONY**
5 MINUTE TIME LIMIT PER SPEAKER (15 MINUTE LIMIT FOR APPLICANT AND PRINCIPAL OPPONENT). SPEAKER GOES TO WITNESS TABLE, STATES NAME & PRESENTS TESTIMONY. COMMISSION MAY ASK QUESTIONS OF SPEAKERS.
 - A. APPLICANT(S)
 - B. OTHER PROPONENTS
 - C. OPPONENTS AND UNDECIDED
 - D. STAFF READS WRITTEN CORRESPONDENCE (TIME LIMIT APPLIES)
 - E. APPLICANT REBUTTAL
- 6. CLOSE OF PUBLIC TESTIMONY PORTION OF HEARING**
- 7. FINAL COMMENTS FROM STAFF AND RECOMMENDATION**
- 8. PLANNING COMMISSION DELIBERATION INCLUDING DISCUSSION OF CRITERIA WITH FINDINGS OF FACT**
- 9. ACTION BY THE PLANNING COMMISSION**
 - A. ORDER OR RESOLUTION – Usually requires passage of order if the commission is the final decision maker, or a resolution if the commission is only advisory to the council.
 - B. VOTE – Vote is done by roll call.
 - C. COMBINATION – Can be combined with other commission action; separate vote on each action is required.

Attachment 1: City of Newberg Planning Commission Participation Guidelines Track Changes

Exhibit A

CITY OF NEWBERG PLANNING COMMISSION PARTICIPATION GUIDELINES

Adopted January 12, 2012

Amended June 9, 2016

Amended April 14, 2022

NEWBERG PLANNING COMMISSION PARTICIPATION GUIDELINES

Newberg planning commission members will strive to:

- 1) Trust and respect the opinions of fellow commission members, staff, and the public and actively participate in the decisions of the planning commission.
- 2) Attend all planning commission meetings.
- 3) Notify the planning staff of an absence as soon as practical prior to the meeting time.
- 4) Make every attempt to resolve any personal conflict with a fellow planning commissioner prior to bringing the conflict to the attention of the planning commission.
- 5) Study material presented in a timely manner and be informed on the issues that come before the commission.
- 6) Follow the commission rules.

NEWBERG PLANNING COMMISSION MEETING EXPECTATIONS

Newberg planning commission members will:

- 1) Be courteous and respectful of citizens and create a welcoming environment that actively involves citizens in the governmental process.
- 2) Communicate in clear, concise and audible verbal and written communications.
- 3) Use a friendly and sincere tone of voice.
- 4) Honor and act on all requests for action and/or information in a timely and courteous manner.
- 5) Discuss issues, but not personalities, with non-commission members.
- 6) After an issue has been voted on, commission members will speak for themselves carefully, in a manner that does not undermine the integrity or motives of the planning commission, even if their personal opinion differs from the planning commission's decision.
- 7) Vote on all motions before the commission, or explain the reasons for abstaining.

CITY OF NEWBERG PLANNING COMMISSION RULES

Adopted January 12, 2012

Amended June 9, 2016

Amended April 14, 2022

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Newberg Planning Commission Rules

SECTION 1 – AUTHORITY

Rule 1.1 Authority of Rules

The planning commission will adopt commission rules by resolution to govern its meetings and proceedings. These rules will decide questions and give direction on debating, voting, membership, attendance, agendas, and other matters. The rules are intended to serve as a guide for the planning commission. One of the goals of the planning commission is to work with the residents of Newberg and provide a positive atmosphere at planning commission meetings. These rules provide the basic outline required to work together. The commission may need to vary from these rules from time to time to best serve the public interest.

Rule 1.2 Questions about these Rules

All questions regarding these rules will be resolved by majority vote of the commission.

Rule 1.3 Presentation of Rules to Planning Commission Members

These planning commission rules will be presented to all planning commission members at or before the time they take the oath of office.

Rule 1.4 Amendments to Planning Commission Rules

Amendments to these planning commission rules will be made by resolution.

SECTION 2 – GENERAL RULES

Rule 2.1 Public Meetings Law

All planning commission meetings will be held in accordance with the Oregon Public Meetings Law (“OPML”). The meetings of the commission, including regular meetings, special meetings, work sessions and emergency meetings are open to the public. The meetings are considered a limited public forum at which planning commission business is conducted in accordance with the agenda and rules of the planning commission. The chair, along with the commission, has the authority to require discussion at the meetings be addressed to the matters that are appropriate to be considered, to limit the time for discussion, and to restrict input concerning the matters to be discussed. The planning commission has the right to require persons attending the meeting, addressing the commission or participating in the meeting to conform to the rules of the commission and directions of the chair.

Rule 2.2 Quorum

Section 2.15.280 of city’s municipal code provides that a majority of the voting members of the planning commission constitutes a quorum to conduct business.

Rule 2.3 Lack of Quorum

If there is a lack of quorum at any scheduled meeting, any hearings scheduled shall be continued to the next scheduled meeting of the commission by announcement to those present, or by posting notice of such continuance prominently at the meeting location.

Rule 2.4 Rules of Order

"Robert's Rules of Order, Newly Revised, Tenth Edition" or the latest editions published thereafter hereafter referred to as "Robert's Rules of Order" will govern all planning commission proceedings unless they conflict with these rules. The chair will have the authority to appoint a parliamentarian for the commission. If there is no person appointed as parliamentarian or that person is absent, the city attorney or community development director will advise the chair concerning parliamentarian matters.

Rule 2.5 Enforcement of Rules

The chair will enforce the planning commission rules. In addition, the chair has the authority to preserve decorum and will determine all points of order, subject to the right of any planning commissioner to appeal to the commission. The chair will enforce order, prevent attacks on personalities or the impugning of members' motives, and keep those in debate to the question under discussion.

Rule 2.6 Suspension of Rules

The vote to suspend commission rules, including Robert's Rules of Order, requires a majority vote of those members of the planning commission who are present. If the motion is carried, the rules will be suspended for that item only.

Rule 2.7 Commissioners Duties to Uphold Rules and Decorum

Commissioners will preserve order and decorum during planning commission meetings, and will not by conversation or other action delay or interrupt the proceedings or refuse to obey the orders of the chair and commission rules. Commissioners will, when addressing staff or commissioners, confine themselves to questions or issues that are under discussion, will not engage in personal attacks, will not impugn the motives of any speaker, and will at all times, while in session or otherwise, conduct themselves in a manner appropriate to the dignity of office. Commissioners will not attack the knowledge, skills, abilities and personalities or impugn city staff members' motives in commission or at any city meetings.

Rule 2.8 Removal of Any Person for Violation of Rules

Any persons making disruptive or threatening remarks or actions during a meeting will forthwith be barred from further audience at that meeting, unless permission to continue is granted by a majority vote of the commissioners present. The community development director or chair may summon the assistance of the police or other administrative staff to prevent further interruption by such person by any action necessary, including the removal of that individual. In case the community development director or chair should fail to act, any commissioner may obtain the floor and move to require enforcement of this rule, upon an affirmative vote of the majority of the commissioners present, the police or administrative staff will be authorized to remove the person(s) as the chair so directs.

Rule 2.9 Records of Proceedings

The Community Development Department will provide a secretary for the commission who will keep a record of commission proceedings. The records of the proceedings are to be known as "minutes." The minutes will be kept in accordance with the Oregon Public Records and Meetings Law.

SECTION 3 – PLANNING COMMISSION MEMBERS

Rule 3.1 Attendance

It is the duty of each commissioner to attend all meetings of the planning commission unless excused. ~~Any member who fails to attend at least seventy-five percent of the regular meetings in any one year of their term shall be disqualified from serving on the commission unless absences are determined to be excused. Upon certification of such disqualification by the commission the commissioner will be replaced by the city council as is provided for the filling of vacancies. A member of the commission may be removed by the city council after hearing for misconduct or nonperformance of duty. Per Newberg Code 2.15.250(C), a member who is absent from two consecutive meetings without an excuse as approved by the planning commission is rebuttably presumed to be in nonperformance of duty and the city council shall declare the position vacant unless finding otherwise following the hearing.~~

Rule 3.2 Excused Absences

When a commissioner cannot attend a meeting, the member is to notify the community development director prior to the meeting. Absences will be considered excused when such notice is given. An absence will be considered unexcused if there is no notification of the absence prior to the meeting, unless otherwise determined by vote of the commission.

Rule 3.3 Report of Absences

The community development director will report to the ~~commission chair city council~~ any time a commissioner ~~fails to attend at least seventy-five percent of the regular meetings in any one year of their term. has four or more absences in a twelve-month period, along with the reasons for any excused absences.~~ The community development director also will report to the city council any time a commissioner ~~fails to attend at least seventy-five percent of the regular meetings in any one year of their term. has two or more unexcused absences in a twelve-month period.~~ The purpose of this notice is to inform the council of the member's attendance, and ~~to refill the commission seat as is provided for the filling of vacancies~~ does not require any particular action by the council unless they so elect.

Rule 3.4 Mayor as Ex-Officio Member of the Planning Commission

By code, the mayor serves as a non-voting ex-officio member of the planning commission.- The mayor shall be invited to, but is not obligated to, attend all meetings and activities of the planning commission. When attending, the mayor shall sit with the commission.

When participating in legislative matters, the mayor shall be invited to participate in the discussion. The mayor shall recuse himself/herself from quasi-judicial matters that eventually may be before the council for decision. This is to avoid questions of ex parte contact or bias in the decision.

Rule 3.5 Student Planning Commissioner

The student planning commissioner is a high school student ~~or college student is appointed in accordance with NMC 2.15.005 who applies for the position by filling out an application for the city committee and gives the City of Newberg a letter of recommendation from a teacher. The mayor selects an individual student and the city council approves the mayor's nomination.~~ The student planning commissioner is expected to attend all planning commission meetings, ~~unless excused by the planning commission.~~ The student commissioner serves a ~~one-year~~ one-year term and is allowed and encouraged to participate in all planning commission events and activities ~~except for voting. The chair shall seek the opinion of the student prior to any significant votes.~~

Rule 3.6 Planning Commissioner Training

The City shall offer training to planning commissioners to educate them in their duties. It shall be the duty of any newly appointed planning commissioner to attend a basic training session from staff within 30 days of his or her appointment. It shall be the duty of any re-appointed planning commissioner to attend at least a one-hour training session from staff or offered by the city within 12 months of the beginning of that person’s appointed term. Planning commissioners are strongly encouraged to attend training of some kind annually.

SECTION 4 – PRESIDING OFFICER

Rule 4.1 Chair

The chair will preside over and facilitate all planning commission meetings, preserve order, enforce commission rules, and determine the order of business pursuant to planning commission rules. The chair is a voting member of the commission and will sign all records of planning commission decisions.

Rule 4.2 Vice Chair

In the absence of the chair, or if the chair is unable to perform the chair’s duties, the vice chair will act as the presiding officer. Whenever in these rules the chair is mentioned, the vice chair acting as presiding officer can exercise the same authority as the chair. The vice chair also assists the chair in his/her duties, such as keeping time, maintaining order, and determining order of speakers.

Rule 4.3 Chair Pro Tem

In the absence of the chair and vice chair at any meeting of the planning commission where a quorum is present, the planning commission members present shall appoint a chair pro tem who will act as presiding officer. The chair pro tem will exercise all the authority of the chair during that meeting.

Rule 4.4 Election of Chair and Vice Chair

At the first meeting of each year, or upon vacancy of the current chair or vice chair, the commission shall elect a chair and vice chair for the remainder of the calendar year. The commission’s policy is to rotate the positions by seniority in such a fashion that each member has the opportunity to serve first as vice-chair, and then the following year as chair. Newly appointed members will be placed at the bottom of the current rotation to allow them to serve a few years first as commissioner then later as chair and vice chair. In case multiple members are appointed at the same time, the commission will decide seniority by vote. The policy does not compel any member to serve as chair who is unwilling, nor does it compel election when the majority determines the commission would be better served by election of different officers. The commission shall consent to the election of each chair and vice chair and absent such consent, shall elect positions by majority vote.

SECTION 5 – PLANNING COMMISSION MEETINGS

Rule 5.1 Regular Meetings

Section 2.15.280 of city’s municipal code provides that the planning commission must meet at least once a month at a time and place designated by the planning commission. The planning commission designates through these rules that the regular meetings of the commission will be held on the second Thursday of each month, except on holidays in which event the commission will meet on the second Wednesday. The commission also will meet on the fourth Thursday if business so requires.

Rule 5.2 Meeting Times and Places

The regular meetings of the commission will begin at 7:00 p.m. Regular planning commission meetings

will take place in the Public Safety Building in the training room at 401 E. Third St., unless specifically designated to occur at another location. Any other such location will be noted in the notice of the meeting. There will be no new items presented after 10:00 p.m. except by vote of the planning commission.

Rule 5.3 Notice of Meeting

The notice of the regular meeting of the planning commission, including the agenda which lists items to be considered by the planning commission, will be given in accordance with the OPML. However, the notice does not limit the matters that can be considered by the planning commission nor prevent the commission from taking up any matter brought before the commission in accordance with the OPML.

Rule 5.4 Special Meetings

The chair, upon the chair's own motion and after consulting the community development director, may, or at the request of three members of the commission, shall, by giving notice to the members of the commission, call a special meeting of the commission for a time not earlier than 24 hours after the notice is given. Notice of a special meeting shall be posted at City Hall and to the extent feasible, provided to interested persons and the local newspaper at least 24 hours prior to the meeting.

Rule 5.5 Cancellation of Meeting

Upon a majority vote of the planning commission members present, a meeting may be canceled when deemed appropriate. If there is no business to transact or a quorum of the planning commission cannot attend and there is no urgent necessity to have the meeting, the community development director with advice and consent of the chair may cancel the meeting. Planning commission members will be notified of the cancellation prior to notice being given to the public. Notice of cancellation will be given as soon as possible to the public in a manner aimed at giving adequate notice.

SECTION 6 – AGENDAS AND ADDITIONAL ITEMS FOR CONSIDERATION

Rule 6.1 Preparation of Agenda

The community development director with the advice and consent of the chair will prepare the agenda along with appropriate documentation for planning commission meetings. Any member of the planning commission may request, through the chair, for a matter to be placed upon the agenda. Such request is subject to the advice of the community development director. Each meeting agenda's format will be prepared as prescribed in the rules. If there is no item to be considered under a section of the agenda, that section will be omitted from the agenda and the agenda will be renumbered accordingly. The final authority on the agenda matters is the planning commission.

Rule 6.2 Non-Agenda Items

Prior to the meeting, the community development director may send out additions to the agenda with the appropriate documentation. The planning commission may consider the items which are not listed on the published agenda. The planning commission must, by a majority, place the item on the agenda. Action may then be taken on the item.

Rule 6.3 Time for Submission of Items

Items for the planning commission agenda will be submitted in time to allow for sufficient research by staff.

Rule 6.4 Staff Reports

Normally the staff will send a report of each planning commission item to be considered by the

planning commission at least eight days prior to the commission meeting.

Rule 6.5 Agenda Availability

Planning commission agendas and the accompanying documents are available at the city planning division office and are posted on the city website normally eight days prior to the planning commission meeting. Interested persons are encouraged to read the agenda along with supporting material, and address questions to the community development director or city staff prior to the meeting. The community development director and planning commission value public input. In order to efficiently conduct city business, those who have concerns are encouraged to address these issues prior to the planning commission meeting.

Rule 6.6 Regular Meeting Agenda

The regular meeting agenda will be as follows:

- I. Call Meeting to Order
- II. Administration of Oath of Office (if needed)
- III. Roll Call
- IV. Public Comment (30 minutes maximum which may be extended at the chair’s discretion; an opportunity to speak for not more than five minutes per speaker allowed)
- V. Consent Calendar
- VI. Public Hearings
- VII. Continued Business
- VIII. New Business
- IX. Items from Staff
- X. Items from Commissioners
- XI. Adjournment

At the chair’s discretion, the chair may change the order of the agenda and allow communications concerning items on the agenda or other commission business.

Rule 6.7 Consent Calendar

The community development director will place items which have been previously reviewed by the planning commission or items which are routine in nature on the consent calendar. Items may be removed from the consent calendar by the chair or by request of a planning commission member. Public comments will be held prior to the approval of the consent calendar to allow the public to address items under consent calendar.

SECTION 7 – PROCEDURES AT MEETINGS

Rule 7.1 Call to Order

The chair will call the planning commission members to order at the hour designated for the meeting. The secretary will call roll. Should there not be a quorum within 15 minutes, the members present will adjourn until a quorum can be gathered or until the next scheduled meeting time established by the planning commission or to the next regular meeting time.

Rule 7.2 Public Comment on Non-Agenda Items

Persons speaking to the planning commission concerning items not on the agenda or items that are on the consent calendar would speak under the public comment period. Those persons will be given the opportunity to speak for up to five minutes. Speakers may share their time at the discretion of the chair.

The maximum time allowed for public comment, including all speakers, is 30 minutes. The chair has the discretion to extend these time limits. Speakers may address the planning commission for less than their allotted time. Speakers may also submit information at the meeting. The commission normally will not take immediate action on any request raised, but may consider acting on a request during items from commissioners.

Rule 7.3 Legislative Public Hearings

For legislative hearings, the commission will follow the legislative hearing format shown in Exhibit “1”. The planning commission’s legislative authority is usually exercised by the adoption of a resolution.

Rule 7.4 Quasi-judicial Public Hearings

For quasi-judicial hearing, the commission will follow the quasi-judicial hearing format shown in Exhibit “2”. The planning commission’s quasi-judicial authority is usually exercised by adoption of an order when the commission is the final decision maker, and by adoption of a resolution when the commission is a recommending body only.

Rule 7.5 Public Comment Registration

In order to properly notify persons who participate in the hearing and to be able to send them information, it is necessary for the interested person to register at the planning commission meeting before making oral comments and/or providing input at the meeting. The interested person shall register for each subject under which they wish to provide comment. The public comment registration forms will be made part of the meeting records in accordance with OPML. The registration forms will contain a provision by which a person may indicate that they do not wish for their address, phone number, and email address to be released in any public records request. When the interested person addresses the commission or gives oral comments, that person should state their name, but does not need to state their mailing address, phone number, or email address. A form complying with this rule will be available at all meetings of the planning commission. The community development director may produce and revise the necessary form that complies with this rule.

Rule 7.6 Public Testimony

Each interested person addressing the commission should do so in a courteous and considerate manner. The person needs to register and follow other rules as provided in the commission rules. The public will be furnished guidelines and should comply with these guidelines for testifying before the planning commission.

Rule 7.7 Time Limits for Testimony

The principal applicant for a proposal will be allotted 15 minutes for an initial presentation. Prior to the meeting the applicant may petition the ~~community development director~~ ~~planning director~~ for additional time for the initial presentation, not to exceed 30 minutes.

A principal opponent, if any, will be allotted time in the same manner as the principal applicant.

All other speakers will be given the opportunity to speak for up to five minutes. Speakers may share their time at the discretion of the chair.

The chair has the discretion to extend these time limits.

Rule 7.8 Written Testimony

In order to be considered at a hearing, written testimony must be received at the Community

Development Department by noon on the third business day (typically Monday) prior to any meeting. Written testimony received after that date will be read out loud at the meeting, subject to time limits for speakers, and will be included in the record if there are future proceedings.

Rule 7.9 Ex parte Contact

Whenever the planning commission conducts a quasi-judicial public hearing, the planning commission must declare any ex parte contact. Rules concerning ex parte contact are set forth in state law.

Commissioners may visit a site individually prior to hearing an application, and shall declare the substance of that visit as ex parte contact. Otherwise, planning commissioners should avoid ex parte contacts.

Rule 7.10 Questions of Speakers

Commissioners may ask questions of speakers following their testimony. Such questions should be directed to elicit information that will help the commission reach a decision. Commissioners should avoid debating or arguing with speakers.

Rule 7.11 Order of Deliberation

The commission's deliberation on an agenda item may begin with a formal motion, or an informal discussion. If the informal discussion is not leading toward a decision, the chair shall call for a formal motion.

The chair shall determine the order of speakers to a motion. Except as otherwise determined by the chair, the maker of the motion will speak first to the motion, followed by the second, and then by other commissioners in the order they request to speak.

Rule 7.12 Speaking and Addressing the Chair

When any commissioner is about to speak in debate or deliver any matter to the planning commission, that commissioner should respectfully address the chair, and be given the floor before speaking. The commissioner should confine the remarks to the question under consideration.

The commissioner should use electronic speaking equipment provided to insure his or her comments are recorded.

Rule 7.13 Motions, Seconds, and Decisions by Unanimous Consent

Generally, no motion will be considered unless it has been seconded. However, routine motions that have the general consent of the planning commission do not require a second, unless requested by any member of the planning commission. Motions brought forth by the chair, which receive no seconds, but also no objections, will be passed by unanimous consent.

Rule 7.14 Voting and Abstaining from Voting

Commissioners shall vote on each motion brought before the commission, or shall explain the reason for abstaining.

Commissioners who abstain from participating in a matter due to a conflict of interest shall retire to the lobby during the time the matter is under consideration. A commissioner in the lobby will continue to be counted in the quorum. Commissioners may not provide testimony before the commission on any matter from which they abstain, but may designate a representative to speak to their interests.

Rule 7.15 Tabled Items

Items that are tabled may be taken from table by majority vote any time during the calendar year, but no later. Items may be postponed to a time certain, including to a following year.

Rule 7.16 Reconsideration

When a question has been decided, it will be in order for a member who voted on the prevailing side to move for reconsideration at the same meeting or next meeting only. For quasi-judicial matters, a motion for reconsideration at the next meeting only may be made upon request of the applicant, having waived rights to the time limits for decisions, and only to correct any technical issue in a decision and not to reverse a decision or decide again any substantive issue.

SECTION 8 – ELECTRONIC MAIL AND ELECTRONIC COMMUNICATION

Rule 8.1 Electronic Mail and Electronic Communication

E-mail or other forms of electronic communication may be used to schedule meetings, send informative messages, or request information from other planning commissioners or the community development director, except as limited by these rules or other applicable law. E-mail or other electronic communication may not be used to discuss policy issues with a quorum of the planning commission at one time or a quorum of a standing advisory body in any manner which would be in violation of the OPML. All planning commission e-mail correspondence is subject to the Oregon Public Records and Meetings Laws and is subject to disclosure.

Rule 8.2 Electronic Mail and Electronic Communication Regarding Quasi-Judicial Items

Commissioners shall refrain from sending electronic communication regarding the substance of any quasi-judicial item. If commissioners receive e-mail or electronic communication concerning the substance of any quasi-judicial item, they shall forward the communication to the community development director. As such information may be ex parte contact, commissioners shall avoid reading such communication outside the period the record is open for written comment. If reading such items is unavoidable, the commissioner shall declare the ex parte contact.

SECTION 9 - RELATIONSHIP WITH THE CITY COUNCIL

Rule 9.1 Role of Planning Commission in Relation to the City Council

Members of the planning commission are appointed by the mayor with consent of the city council. -The mayor and council appoint them to provide study and perspective on issues beyond what the council can provide.- Commissioners provide the highest value providing independent recommendations and not anticipating or mimicking what they feel the council’s decision on a matter would be.

After the city council has voted on an issue that previously has been before the planning commission, commission members will speak for themselves carefully, in a manner that does not undermine the integrity or motives of the city council, even if the their personal opinions or the commission’s decisions differ from the city council’s decision.

Rule 9.2 Joint Meetings with City Council or Other Boards

The commission should periodically hold joint meetings with the city council to share directly information and perspectives regarding particular issues.-The mayor shall preside at such joint meetings.

The commission also may have joint meetings with other boards or commissions, such as the traffic safety commission. The chairs of the boards shall determine the agenda and the manner of facilitating the meeting.

Rule 9.3 Planning Commission Presentations at City Council Work Sessions

The city council has established a work session before council meetings, and has invited the planning commission to make presentations on any matter during that meeting. The commission may appear as a whole, the chair or vice-chair may represent the commission, or the commission may appoint one or more members to represent the commission to the council. The planning commission chair shall notify the mayor as far in advance as possible and at least one week in advance of the meeting if the commission wishes to make use of this time

Rule 9.4 Attendance at and Participation in City Council Meetings

In legislative matters, after the planning commission has taken action on an item, the mayor or city manager may request that the chair or chair's designee attend a city council meeting to report the commission's recommendation. The planning commission also may appoint a representative to attend the city council meeting and convey the commission's recommendation.

On quasi-judicial items, the planning commission's report to the council consists of their written decision, findings and the record. Commission members do not speak at the council meeting unless requested by the city council or mayor.

Otherwise, planning commissioners may attend any meeting of the city council. They may speak to the council for themselves as a citizen on any item.

OUTLINE FOR LEGISLATIVE PUBLIC HEARING
Newberg Planning Commission

- 1. CALL TO ORDER**
OPEN THE PUBLIC HEARING, ANNOUNCE THE PURPOSE, DISCUSS TESTIMONY PROCEDURE, AND TIME ALLOTMENTS
- 2. CALL FOR ABSTENTIONS AND OBJECTIONS TO JURISDICTION**
- 3. STAFF REPORT**
COMMISSION MAY ASK BRIEF QUESTIONS FOR CLARIFICATION
- 4. PUBLIC TESTIMONY**
5 MINUTE TIME LIMIT PER SPEAKER (15 MINUTE LIMIT FOR APPLICANT AND PRINCIPAL OPPONENT). SPEAKER GOES TO WITNESS TABLE, STATES NAME & PRESENTS TESTIMONY. COMMISSION MAY ASK QUESTIONS OF SPEAKERS.
 - A. APPLICANT(S) (IF ANY)
 - B. OTHER PROPONENTS
 - C. OPPONENTS AND UNDECIDED
 - D. STAFF READS WRITTEN CORRESPONDENCE (TIME LIMIT APPLIES)
 - E. APPLICANT (IF ANY) REBUTTAL
- 5. CLOSE OF PUBLIC TESTIMONY PORTION OF HEARING**
- 6. FINAL COMMENTS FROM STAFF AND RECOMMENDATION**
- 7. PLANNING COMMISSION DELIBERATION**
- 8. ACTION BY THE PLANNING COMMISSION**
 - A. RESOLUTION – Usually requires passage of resolution.
 - B. VOTE – Vote is done by roll call.
 - C. COMBINATION – Can be combined with other commission action; separate vote on each action is required.

OUTLINE FOR QUASI-JUDICIAL PUBLIC HEARING
Newberg Planning Commission

- 1. CALL TO ORDER**
OPEN THE PUBLIC HEARING, ANNOUNCE THE PURPOSE, DISCUSS TESTIMONY PROCEDURE, AND TIME ALLOTMENTS
- 2. CALL FOR ABSTENTIONS, BIAS, EX PARTE CONTACT, AND OBJECTIONS TO JURISDICTION**
- 3. LEGAL ANNOUNCEMENT**
READ “QUASI-JUDICIAL ANNOUNCEMENTS” SHEET
- 4. STAFF REPORT**
COMMISSION MAY ASK BRIEF QUESTIONS FOR CLARIFICATION
- 5. PUBLIC TESTIMONY**
5 MINUTE TIME LIMIT PER SPEAKER (15 MINUTE LIMIT FOR APPLICANT AND PRINCIPAL OPPONENT). SPEAKER GOES TO WITNESS TABLE, STATES NAME & PRESENTS TESTIMONY. COMMISSION MAY ASK QUESTIONS OF SPEAKERS.
 - A. APPLICANT(S)
 - B. OTHER PROPONENTS
 - C. OPPONENTS AND UNDECIDED
 - D. STAFF READS WRITTEN CORRESPONDENCE (TIME LIMIT APPLIES)
 - E. APPLICANT REBUTTAL
- 6. CLOSE OF PUBLIC TESTIMONY PORTION OF HEARING**
- 7. FINAL COMMENTS FROM STAFF AND RECOMMENDATION**
- 8. PLANNING COMMISSION DELIBERATION INCLUDING DISCUSSION OF CRITERIA WITH FINDINGS OF FACT**
- 9. ACTION BY THE PLANNING COMMISSION**
 - A. ORDER OR RESOLUTION – Usually requires passage of order if the commission is the final decision maker, or a resolution if the commission is only advisory to the council.
 - B. VOTE – Vote is done by roll call.
 - C. COMBINATION – Can be combined with other commission action; separate vote on each action is required.

Planning Commission Agenda Item Report

Meeting Date: April 14, 2022

Submitted by: Doug Rux

Submitting Department: Community Development

Item Type: PC UPDATES

Agenda Section:

Subject:

Anticipated Schedule of Planning Commission Activities

Suggested Action:

Information only.

Attachments:

[Memo Planning Commission Activities 2021.doc.pdf](#)

MEMORANDUM

TO: Newberg Planning Commission
FROM: Doug Rux, Community Development Director
SUBJECT: Anticipated Schedule of Planning Commission Activities
DATE: April 14, 2022

To assist the Planning Commission in gauging activities for FY 21/22 and FY 22/23 below is a preliminary schedule of activities.

April 14, 2022

- Appeal Elliott Road Determination – Quasi Judicial Hearing (continued)
- CUP Vacation Rental 2035 N Heritage Way – Quasi Judicial Hearing
- Planning Commission Participation Guidelines Update

May 12, 2022

- Crestview Green PUD/CUP – Quasi Judicial Hearing
- Development Code Amendment – Temporary and Portable Signs – Legislative

June 9, 2022

- Briefing Housing Production Strategy
- SB 458 Middle Housing Land Division – Legislative Hearing (Tentative)

June 21, 2022 (Extra meeting)

- PSU Student Presentation Car Camping/Joint with City Council

July 14, 2022

- EOA Comp Plan Amendment - Legislative Hearing (Tentative)
- HNA Comp Plan Amendment- Legislative Hearing (Tentative)
- Public- Semi Public Comp Plan Amendment - Legislative Hearing (Tentative)

August 11, 2022

- West End Mill District Comprehensive Plan Text Amendment, Comprehensive Map Amendment/Zoning – Quasi Judicial Hearing (Tentative)
- TBD

September 8, 2022

- TBD

October 13, 2022

- Development Code Amendment – Substantial Completion – Legislative Hearing (Tentative)

- Development Code Amendment – Institutional Zone & Overlay Regulations – Legislative Hearing (Tentative)
- TBD

November 10, 2022

- Briefing Housing Production Strategy
- TBD

December 8, 2022

- TBD

January 12, 2023

- TBD

February 9, 2023

- TBD

March 9, 2023

- Briefing Housing Production Strategy
- TBD

There are additional activities the Community Development Department may bring forward to the Planning Commission for consideration for land use cases. Staff is also looking at various updates and cleanup actions to the Development Code such as:

1. Appendix A revisions roadway cross-sections
2. Tentative – Military Banner Sign Regulations – Legislative
3. Residential Parking Standards
4. Annexation criteria
5. Stream Corridor Adjustment process
6. Urban Forestry program
7. Fences in Industrial zones
8. Parking for subdivisions/partitions/design review
9. C-3 zone – reduce front yard landscaping from 10 feet to 5 feet
10. Industrial outdoor storage
11. Downtown sign point system
12. Vacation home rentals
13. Roof top mechanical unit screening
14. Historic review process
15. Zoning Use Table
16. Undergrounding utilities
17. Driveway width
18. Home occupations
19. 15.405.030B – “The creation” development of lots under 15,000 sf.....

20. 15.302.010 – add R-4 to the list
21. Replace parking diagrams in 15.440.070 for readability
22. Replace airport overlay diagrams in back of Dev. Code for readability
23. Temporary Merchant standards
24. Food Carts